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**REDACTED – FOR PUBLIC INSPECTION**

June 4, 2018

*By ECFS*

Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554  
Attn: Media Bureau

**Re: beIN Sports, LLC v. Comcast Cable Communications, LLC and Comcast Corporation, MB Docket No. 18-90**

Dear Ms. Dortch:

In accordance with the *Protective Order* in the above-captioned proceeding,<sup>1</sup> beIN Sports, LLC (“beIN”) submits the enclosed public redacted version of its Reply dated June 1, 2018.

beIN has denoted with “{{BEGIN HIGHLY CONFIDENTIAL}} {{END HIGHLY CONFIDENTIAL}}” Highly Confidential Information taken from or derived from the Highly Confidential Information in Comcast’s Answer. beIN has also denoted with “[[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]]” beIN or Comcast confidential information taken from or derived from beIN’s Complaint or Comcast’s Answer. A Highly Confidential and a Confidential version of this filing are being simultaneously filed with the Commission.

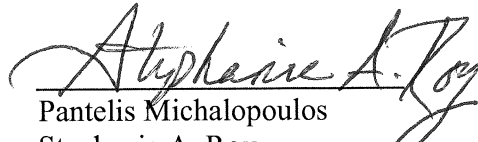
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<sup>1</sup> beIN Sports, LLC, Complainant, v. Comcast Cable Communications, LLC and Comcast Corporation, Defendants, Request for Enhanced Confidential Treatment, *Order*, MB Docket 18-90, DA 18-487 (May 11, 2018) (“*Protective Order*”).

Marlene Dortch  
June 4, 2018  
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Please contact me with any questions.

Respectfully submitted,

  
Pantelis Michalopoulos  
Stephanie A. Roy  
*Counsel to beIN Sports, LLC*

**REDACTED—FOR PUBLIC INSPECTION**

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
<b>beIN Sports, LLC,</b>	)	MB Docket No. 18-90
Complainant,	)	File No. CSR-8954-P
	)	
v.	)	
	)	
<b>COMCAST CABLE COMMUNICATIONS,</b>	)	
<b>LLC,</b>	)	
and	)	
<b>COMCAST CORPORATION,</b>	)	
Defendants.	)	
	)	
	)	
TO: Chief, Media Bureau	)	

**beIN REPLY TO COMCAST ANSWER**

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June 4, 2018

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<b>COMCAST CORPORATION,</b>	)	
Defendants.	)	
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TO: Chief, Media Bureau	)	

**beIN REPLY TO COMCAST ANSWER**

**I. INTRODUCTION**

1. To deflect beIN's complaint, Comcast effectively asks the Commission to rule that (a) Comcast affiliated programming is not similarly situated to beIN's independent programming because of the advantages Comcast has given itself; (b) in determining whether programming is similarly situated, content categories should be sliced so thinly that all content is unique and not similarly situated with any other content; (c) beIN should ignore its history with Comcast and believe that Comcast's December 13, 2017 offer was in fact posturing and not to be taken seriously; and at the same time (d) the only relevant inquiry is whether Comcast can proffer a mere fig leaf of commercial justification as to why Comcast did not like beIN's offer in order to have a claim dismissed.

2. Comcast's first theme amounts to little more than an assertion that only Comcast can be Comcast. Which is precisely the point.

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3. Congress enacted Section 616 to guard against vertically integrated distributors favoring their affiliated content. Comcast cannot now turn around and claim that the perquisites it can guarantee for its own affiliated networks as a result of its vertical integration can themselves insulate Comcast from a “similarly situated” showing and therefore from a discrimination claim by any independent programming vendor. In the *NFL Memorandum Opinion and Hearing Designation Order*, the Commission rejected Comcast’s argument that differences in distribution of affiliated networks arising from historic treatment of the same were legitimate “business justifications” for disparate carriage decisions. Discriminatory treatment in the past does not legitimize its own continuation.

4. Comcast’s second main theme is also an attempt to nullify the program carriage rules. Is there any network whose programming is similarly situated with NBC Sports and Universo, two networks that Comcast itself calls a “sports” network and a “sports and entertainment” network respectively, two networks whose marketing, website, online stores, and overall persona scream the word soccer? Comcast’s answer seems to be, I will know it when I see it, but I have not seen it yet. But then, Comcast has never met an independent programming vendor that Comcast believes offers similarly situated programming to Comcast’s affiliated networks. This is not the right standard.

5. The Answer’s third theme is that beIN has jumped the gun. Comcast’s intimation here is that, if the December 13, 2017 offer was discriminatory, it was only because it was an early offer, and a subsequent non-discriminatory offer would emerge later if only beIN had chosen to wait, though such an offer still has not emerged. There is no “early offer” exception to the program carriage rules. Comcast’s gun-jumping charge is particularly inept here, where beIN waited patiently for eight months for Comcast to respond to beIN’s April 2017 offer.

6. Finally, the Answer's fourth pervasive theme is a desire to change the conversation on all elements of beIN's claim beyond the "similarly situated" question. Comcast cannot say it did not discriminate, and therefore it pivots to saying that its discrimination was due to legitimate commercial considerations. Except it cannot say *its offer* was based on such considerations either, and so it retreats to the argument that it was beIN's initial offer that was not based on such considerations. As will be shown, these maneuvers are evasive as a matter of law, and Comcast's assertions are inaccurate as a matter of fact anyway.

## II. SUMMARY

### A. The beIN and NBC Networks Are Similarly Situated.

- *Programming.* The programming lineups of beIN and beIN en Español are similarly situated to those of NBC Sports and Universo and so are the respective networks. On the one side, we have two networks (beIN, beIN en Español) focused on sports programming with a particular emphasis on soccer; on the other, we have two networks (NBC Sports, Universo) with precisely the same focus and emphasis. NBC Sports proudly pronounces it is about "all things soccer." One third of Universo's top-50 programs, and a full [[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]] are soccer games, even under a gerrymandered calculation. The president of NBC Sports protests that NBC Sports is not a soccer network, not because it should be more broadly defined, but rather because it should be defined even more narrowly, as the network of a particular soccer league. The New York Times has written that soccer has "redefined" NBC Sports.
- *Demographics.* Despite Comcast's claim that its networks reach older and less affluent viewers, the two pairs of networks attract similar demographics. The viewers of both beIN and NBC Sports skew strongly male [[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]], and have very similar incomes of [[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]]—hardly the rich/poor picture painted by Comcast. As for beIN en Español and Universo, the median viewer age of both networks' viewers is exactly the same—[[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]] years old—so much for age difference. Comcast states that more than 75% of Universo households have an income below \$75,000; [[BEGIN CONFIDENTIAL]]

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- *Audience Overlap.* Comcast claims that there is limited overlap between viewers of the beIN networks and the NBC Sports and Universo networks by citing a useless set of numbers: the percentage of NBC viewers who also watch beIN. Since the NBC Sports and Universo networks reach more than 80 million households and the beIN networks reach fewer than 30 million, it is rather natural that the majority of NBC viewers could not tune to beIN whether they wanted to or not. The correct question to ask is how many of beIN's viewers, most or all of whom also have access to NBC, also view the NBC networks. The answer is that the majority do. The overlap is more than [[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]] what Comcast claims in the case of NBC Sports, and more than [[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]] what Comcast claims in the case of Universo.
- *Ratings.* When a network has access to three times more households than another, it is neither surprising nor useful to know that more viewers watch the first than the second. To compare apples to apples, the two networks' ratings must be expressed as percentages of the viewers to whom each has access. The [[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]] of each network's viewers is another useful measure uninfected by the huge difference in reach. Yet Comcast dismisses coverage-area ratings on the ground that they tell us nothing about beIN's ratings when it is distributed more broadly. Not so: beIN in fact experienced significant, more than six-fold, ratings growth in the Dallas market where Time Warner gave beIN broad distribution in 2015. Comcast also dismisses the [[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]] ratings on the curious ground that enthusiasm for a network's programming is a bad thing—indicative of niche content—not the good thing that industry executives and advertisers know it to be.
- Effectively, Comcast is arguing that the competitiveness of beIN with NBC Sports among sports package viewers should be ignored because sports viewers naturally skew towards sports. But that is what NBC Sports, too, provides. Sports viewers are the best jury for the popularity of both beIN and NBC Sports. Literally, beIN rivals NBC Sports at its own game.
- *Advertisers.* Comcast claims that the advertisers shared by the NBC and beIN networks are all large companies that will advertise just about everywhere. Comcast should know better. Its affiliated NBC networks and beIN share over [[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]] advertisers. Many of them are small companies for which these networks are uniquely or especially suitable for placing ads, such as [[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]] And Comcast disregards evidence submitted by beIN that advertisers move their business between the two sets of networks.
- *Other Distributors.* Comcast claims that it treats beIN no worse than other distributors. A number of distributors today give beIN access to many more of their subscribers than Comcast does. In addition, Comcast's December 13, 2017 offer would reduce beIN's access to below [[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]] of Comcast's subscriber base, compared to an average of about [[BEGIN

CONFIDENTIAL]] [[END CONFIDENTIAL]] of households on the systems of other distributors and much broader penetration on platforms such as Charter and Verizon.

**B. Comcast's Offer Is Discriminatory.**

7. While answering with an unwavering “no” the question of whether there are any programs similarly situated with its own content, Comcast has nothing to say about the question of discrimination itself. It does not deny the preferential distribution afforded to NBC Sports and Universo. It does not deny that its offer discriminates against beIN by not providing for authentication of Comcast customers to beIN's online offering, and by not providing for High Definition (“HD”). beIN's programming is the only soccer content on Comcast's platform to be provided on a format so eminently unsatisfactory for the game, and Comcast is the only major platform that does not carry beIN in HD. Rather, it puts down these instances of discrimination to a familiar refrain—it was early in the negotiations and Comcast was holding back, presumably willing to cede non-discriminatory treatment on a later day, which has yet to arrive, no matter that Comcast has unwaveringly resisted repeated requests from beIN.

8. Comcast's most, or only, plausible motive for denying beIN HD carriage is favoritism towards NBC: beIN actually provides Comcast with an HD signal, and Comcast affirmatively worsens its quality by down-resolution. Comcast does not quantify any bandwidth costs saved by this action.

9. Nor does Comcast deny that Comcast pays NBC Sports far more than it does beIN—indeed, it essentially confirms these points, which should be viewed as conceded by the Bureau.

**C. Comcast's Discrimination Is Not Excused by Legitimate Commercial Considerations.**

10. Rather, Comcast skips the discrimination stage and turns to the argument that the discriminatory treatment is justified by legitimate commercial reasons. beIN does not need to show that the treatment is unjustified at the *prima facie* stage. But this is no matter, as beIN can in fact make that showing now. The idea that Comcast made the December 13, 2017 offer because broader distribution of beIN's network would not yield a "net benefit" for Comcast or would lose Comcast money cannot survive a simple fact—the [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]] of Comcast's proposal. At a [[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]], broader distribution would be all upside and no documented downside for Comcast.

11. To escape the logic of that fact, Comcast seeks to change the conversation. Instead of defending its offer to beIN and explaining how that offer is justified by its benefit calculus, Comcast entirely shifts the focus to beIN's original offer and attacks that offer as money losing to Comcast. But this proceeding is not about whether beIN's original offer was reasonable, or whether that offer would produce value for Comcast. The question is whether Comcast's own discriminatory conduct can be justified. That question belongs to the merits, not the *prima facie* stage of the proceeding. But it can already be answered: Comcast cannot even show that beIN's revised offer would lose it money.

12. The threadbare and unsupported calculation submitted by Comcast {{BEGIN HIGHLY CONFIDENTIAL}}

{{END HIGHLY CONFIDENTIAL}} is shrouded in mystery: Comcast tells us that losing beIN would lose Comcast a certain number of subscribers that, it says, is derived from {{BEGIN HIGHLY CONFIDENTIAL}} {{END HIGHLY

CONFIDENTIAL}}. But it never discloses these data, asking us to believe that the number is accurate on Comcast's say so. {{BEGIN HIGHLY CONFIDENTIAL}}

{{END HIGHLY  
CONFIDENTIAL}}. And in the end, even that tremendous opacity does not help Comcast with the results: {{BEGIN HIGHLY CONFIDENTIAL}}

{{END  
HIGHLY CONFIDENTIAL}}.

**D. Comcast's Discriminatory Treatment Has Unreasonably Restrained beIN's Ability to Compete.**

13. Comcast is wrong that the restraint on beIN's ability to compete is "anticipatory" because beIN has not accepted Comcast's offer. If it were right, no programmer could file a discrimination complaint unless it accepted the discriminatory offer, suffered its consequences, and then filed a complaint pointing to its suffering. Yet the Commission clearly wanted to allow programmers to complain against discriminatory offers without accepting them.

14. Nor is it true that the ability of beIN to compete will be unimpaired because Comcast viewers "typically" have no less than five additional pay TV options, and are supposedly free to leave Comcast for one of these options. As discussed by expert economists Dr. Eliana Garcés and William Zarakas in their Declaration, such claims have been notoriously debunked before. Among other things, consumers face high switching costs that deter consumers from switching providers.

15. In any event, beIN's ability to compete is being restrained already today.  
[[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]. In their Declaration, Dr. Garcés and Mr. Zarakas confirm that Comcast has hurt beIN in its ability to compete for viewers and advertisers alike.

**E. The Consent Decree Applies to an Offer Comcast Made Before its Expiration.**

16. Comcast is also wrong that its offer is not subject to the program carriage condition that was imposed on Comcast as a condition to its acquisition of NBC. That offer was made on December 13, 2017, while that condition is still in force. What matters under the condition is the time of the conduct in question, not the date of the complainant complaining of such conduct. Certainly the Commission did not require allegations of violations of this behavior to be brought to it by the time of the expiration of these conditions. Rather, the only time limit on bringing a complaint about such behavior is the statute of limitations—in this case, one year from the date that beIN notified Comcast that it intended to file a complaint, or February 13, 2018. Such a reading of the condition’s term would artificially shorten the life of the condition by many months, and should be rejected.

**III. THE PROGRAMMING LINEUPS AND NETWORKS ARE SIMILARLY SITUATED (beIN WITH NBC SPORTS, beIN EN ESPAÑOL WITH UNIVERSO)**

17. The showing required by the rules is that the complainant’s *programming* is similarly situated to that of a vendor affiliated with the distributor.<sup>1</sup>

18. Comcast claims that the necessary comparison is between two “cable networks,”<sup>2</sup> not between their programming. While it is convenient to refer to “networks” in a similarly

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<sup>1</sup> 47 C.F.R. § 76.1301(c) (“No multichannel video programming distributor shall engage in conduct the effect of which is to unreasonably restrain the ability of an unaffiliated video programming vendor to compete fairly by discriminating in video programming distribution on the basis of affiliation or non-affiliation of vendors in the selection, terms, or conditions for carriage of video programming provided by such vendors.”).

situated analysis, Comcast’s argument finds no support in the language of the Commission’s rules. In any event, both the programming lineups and the networks are similarly situated (beIN with NBC Sports, beIN en Español with Universo) in this case. beIN will refer interchangeably to programming lineups and networks in its similarly situated analysis.

**A. Comcast Sets the Bar So High that No Two Programming Lineups Would Ever Be Similarly Situated.**

19. The programming lineups of the four networks are similarly situated because sports programming in general, and soccer in particular, is by Comcast’s admission a top marquee attraction for NBC Sports and Universo. To divert attention from the uncanny resemblance, Comcast tries to slice the programming provided by those networks into categories so thin that no two programming lineups would ever be found to be similarly situated.

20. Comcast is not denying, or is denying feebly, the essential common thread running through the programming of beIN and NBC Sports; they are focused, exclusively (NBC Sports) or heavily (Universo), on sports programming.<sup>3</sup> Nor could Comcast plausibly issue such a denial. NBC Sports bills itself as “dedicated to serving passionate sports fans. Together, the Emmy Award-winning networks [NBC Sports and NBC Sports Network] are the home of the Summer and Winter Olympics, National Hockey League (NHL), Premier League, Formula One, IndyCar (NBCSN), Tour de France, Premier Boxing Champions and beginning in 2015,

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<sup>2</sup> Complaint ¶ 4 (“Contrary to the view expressed by Comcast in correspondence with beIN, the relevant question that antecedes a finding of unlawful discrimination under the Program Carriage Rules is whether a vendor’s programming is similarly situated to programming offered by an MVPD-affiliated vendor. Neither the statute nor the implementing rules require a showing that the two vendors’ networks are similarly situated.”).

<sup>3</sup> See Answer ¶ 24 (“NBCSN is a general multi-sport network.”).

NASCAR.”<sup>4</sup> NBC Sports is part of NBC Sports Group, which describes itself as serving “fans 24/7 with premier live events, insightful studio shows, and compelling original programming.”<sup>5</sup>

21. As for Universo, Comcast does astonishingly deny its sports nature when it says that “it is not a sports network.” That would be news to Universo itself, which has emphatically described itself as what Comcast has just denied it is: a “sports and entertainment” network.<sup>6</sup> Sure, the network offers non-sports programming, too, such as reality shows and telenovelas. But its statements about itself and its marketing literature leave no doubt that Spanish language sports is its lodestar. Thus, Universo “delivers in Spanish language a thrilling mix of exclusive sports action – including FIFA World Cup™, NASCAR Mexico Series, NFL, Premier League and the 2016 Olympic Summer Games in Rio – along with signature series, blockbuster movies, music, must-see live events and strategic acquisitions, on TV, online and mobile devices.”<sup>7</sup> Its Facebook cover photo touts the fact that it has the rights to Spanish-language World Cup. Moreover, Universo has specifically targeted Hispanic audiences through its addition of Liga

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<sup>4</sup> *NBCSN*, NBC Universal, <http://www.nbcuniversal.com/business/nbc-sports-network-nbcun> (last visited May 22, 2018).

<sup>5</sup> *About NBC Sports Group*, NBC Sports Group Press Box, <http://nbcportsgrouppressbox.com/about/> (last visited May 22, 2018).

<sup>6</sup> *Why mun2 Is Now NBC Universo*, NBCUniversal, <http://www.nbcuniversal.com/article/why-mun2-now-nbc-universo> (last visited May 22, 2018).

<sup>7</sup> *Universo*, NBC Universal, <http://www.nbcuniversal.com/business/NBCUniverso> (last visited May 22, 2018).

MX soccer games.<sup>8</sup> As NBC itself has admitted, Universo is “built on a solid foundation of sports featuring some of the world’s best franchises.”<sup>9</sup>

**B. Soccer Is Marquee Programming for All Four Networks.**

1. *What Comcast says in its Answer.*

22. Next, Comcast tries to invent a difference based on the mix of different sports in each network’s programming lineup: in its view, beIN is more soccer-centric, whereas soccer accounts for only ten percent and six percent of the NBC Sports and Universo lineup respectively; *ergo*, they are not similarly situated.<sup>10</sup>

23. To begin with, this argument runs directly into the teeth of Commission precedent.<sup>11</sup> The Commission has found that a sports network providing only football is similarly situated to a sports network that provides only golf, with zero overlap as to the kinds of

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<sup>8</sup> Juan Fernandez Gonzalez, *Telemundo, NBC Target Hispanics with Mexico’s Liga MX*, Rapid TV News (July 18, 2015), <https://www.rapidthvnews.com/2015071839117/telemundo-nbc-target-hispanics-with-mexico-s-liga-mx.html#axzz5GMrBP6E9>.

<sup>9</sup> *NBC Universo Announces Highlights of Its Upcoming Sports & Entertainment Lineup*, Comcast (May 15, 2015), <https://corporate.comcast.com/news-information/news-feed/nbc-universo-announces-highlights-of-its-upcoming-sports-entertainment-lineup> (“‘Viewers can tune into NBC Universo for blockbuster movies, edgy entertainment, music and big events — all built on a solid foundation of sports featuring some of the world’s best franchises,’ said Rubén Mendiola, President, NBC Universo. . . . From the studio to the field, NBC Universo will build upon its great soccer lineup that currently includes Premier League and FIFA World Cup™. Starting this fall, the channel will become the home to some of the best Liga MX competition. NBC Universo will exclusively air all of the home games for León and Pachuca every Saturday night. Viewers will be able to experience all the teams of Liga MX as they visit Estadio León and Estadio Hidalgo under the lights. Also, NBC Universo will air key qualifying matches for CONCACAF and the 2016 Rio Summer Olympics beginning later this year.”).

<sup>10</sup> Answer ¶ 28.

<sup>11</sup> *NFL Enterprises LLC, Complainant v. Comcast Cable Communications, Defendant, Memorandum Opinion and Hearing Designation Order*, 23 FCC Rcd. 14787, 14823 ¶ 75 (2008) (“Comcast appears to be arguing that a complainant must demonstrate that the programming is identical to an affiliated network in order to demonstrate discrimination. We find that this is a misreading of the program carriage statute and our rules.”) (“*NFL HDO*”).



sports each covers. This is precisely the holding in *NFL HDO*: the Media Bureau found that the programming of the NFL Network was similarly situated to that of the Golf Channel and Versus, because all three lineups belong to the genre of national sports, with the three networks competing for programming rights, advertisers and viewers.<sup>12</sup> It follows *a fortiori* that two networks that cover overlapping types of sports must be similarly situated. This is the case here: NBC Sports shows soccer games just as beIN does, and beIN features motor sports, rugby, and college sports games just as NBC Sports does.<sup>13</sup>

24. Just as important, Comcast itself recognizes the central role of soccer in the lineups of both NBC Sports and Universo. Comcast recognizes that NBC Sports’ “marquee sports programming” includes the English Premier League (“EPL” or “Premier League”).<sup>14</sup> Comcast’s main pleading is less candid than the summary, as it conveniently omits EPL from the list of marquee programming, but cannot help revealing in a footnote that the source text includes it.<sup>15</sup>

25. Comcast also recognizes that soccer is among the top programs on NBC Sports, but maintains that only one of its top 50 telecasts in 2017 was a soccer game.<sup>16</sup> The top-50 list, however, is skewed against soccer for a number of reasons.

26. For one thing, all of [[BEGIN CONFIDENTIAL]]

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<sup>12</sup> *Id.* at 14822-23 ¶ 75 (2008); *see also id.* at 14829 ¶ 90.

<sup>13</sup> Answer ¶ 28.

<sup>14</sup> *Id.* at 3.

<sup>15</sup> *Id.* ¶ 24 n.22.

<sup>16</sup> *Id.* ¶ 30.

[[END

CONFIDENTIAL]].<sup>18</sup>

27. Additionally, Comcast's attempt to deemphasize soccer ignores another key fact: unlike beIN, which can only show two games at a time on its networks, NBC can and does air multiple Premier League games at the same time, which divides up the potential audience even more.<sup>19</sup> Thus, if NBC soccer telecasts were restricted to only two channels, as beIN's programming is, it is likely that soccer matches would make up a higher percentage of its top 50 shows.

28. Ironically, the quote from Jon Miller, the President of NBC Sports and NBC Sports Network, invoked by Comcast to show that NBC Sports is not centered on soccer unwittingly betrays the opposite—that NBC Sports is even more narrowly focused on one soccer league. Here is his statement: "Miller was quick to point out NBC Sports are not evangelists on behalf of the 'beautiful game' . . . . 'We don't want to be the network of soccer,' Miller said. We want to be the network of the Premier League. There's a big difference."<sup>20</sup> While there may

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<sup>17</sup> See generally Alex Putterman, *The NBA and NHL Both Drew Strong Ratings During Opening Weekend of Playoffs*, Awful Announcing (Apr. 17, 2018), <http://awfulannouncing.com/ratings/nba-nhl-both-drew-strong-ratings-during-opening-weekend-playoffs.html>.

<sup>18</sup> See Litman Decl. Exhibit 2.

<sup>19</sup> See Steven Goff, *NBC Sports Sets Broadcast Schedule for Final Day of Premier League Season*, Washington Post (May 12, 2016), [https://www.washingtonpost.com/news/soccer-insider/wp/2016/05/12/nbc-sports-sets-broadcast-schedule-for-final-day-of-premier-league-season/?utm\\_term=.dd0f5051a4af](https://www.washingtonpost.com/news/soccer-insider/wp/2016/05/12/nbc-sports-sets-broadcast-schedule-for-final-day-of-premier-league-season/?utm_term=.dd0f5051a4af).

<sup>20</sup> Answer ¶ 25.

be a big difference between the two in Mr. Miller's view, it is not a difference of the kind that defeats similarly situated status: to say that beIN and NBC Sports are not similarly situated because they cover two different leagues is akin to saying that two tennis networks are not similarly situated because one covers Wimbledon and the other Roland-Garros. What matters for purposes of this proceeding is that Mr. Miller's statement belies Comcast's assertion that soccer is a mere "component" of NBC Sports' programming. It is a component dominant enough to make NBC Sports an "EPL network," a network defined by the soccer league it carries.

29. The similarity acknowledged by Comcast between beIN en Español and Universo is even greater: "soccer represented only about a third of the top programs" on Universo.<sup>21</sup>

Whether the right qualification in that sentence should be "only" or "as many as" is in the eye of the beholder, of course. But the more reasonable reading is that, when [[BEGIN  
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CONFIDENTIAL]], soccer is a very important part of Universo.<sup>22</sup> As Mr. Litman cannot help acknowledging, "beIN Sports en Español's most viewed programs do have some degree of overlap with Universo's . . . ." <sup>23</sup> Notably, Comcast offers silence when it comes to the rank of the soccer games among the top 50 telecasts. Did soccer rank towards the top or the bottom of the top list? The silence suggests the top. Nielsen data confirm it: [[BEGIN

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<sup>21</sup> *Id.* ¶ 30.

<sup>22</sup> Mr. Litman buries in a footnote that, if one hour telecasts were used for beIN en Español and Universo, the top 12 programs on Universo would be soccer and that 25 of the top 50 would be soccer. Additionally, only 10, or 20% of the top 50, would be non-sports programming. Litman Decl. ¶ 50 n.49.

<sup>23</sup> *Id.* ¶ 50.

CONFIDENTIAL]].<sup>24</sup> And in reality, the number of soccer games among the top 50 telecasts is even greater where only equal-length shows are considered. Comcast attempts to mask the fact that it had to change its definition of top 50 programs in an apparent effort to compare the number of soccer games.<sup>25</sup> When comparing beIN and NBC Sports, the relevant metric was all event-length (over one hour) shows. However, when comparing beIN en Español to Universo, Mr. Litman changes the metric to all programming, including shows shorter than one hour.<sup>26</sup> Finally, professional wrestling, another sport that beIN en Español distributes, is also among the top 50 programs on Universo.

2. *What Comcast does.*

30. As the Commission has noted, actual business practice speaks more loudly than claims made for the purpose of litigation.<sup>27</sup> NBC Sports positions itself as a one-stop source for all things soccer.

31. The grudging recognition of soccer's importance in Comcast's Answer does not begin to do justice to the huge investment the two networks have made in soccer, the mammoth advertising campaign devoted to soccer, and soccer's pride of place in both NBC networks' programming lineups and promotional material and literature.

32. Let us start with the money, which the two networks have put where their interest is. They have paid large amounts to secure the rights to EPL, World Cup CONCACAF

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<sup>24</sup> *Id.* Exhibit 4.

<sup>25</sup> *Id.* ¶ 51.

<sup>26</sup> *Id.* ¶ 51.

<sup>27</sup> *Game Show Network, LLC v. Cablevision Systems Corp., Memorandum Opinion and Order*, 32 FCC Rcd. 6160, 6176-77 ¶¶ 53-54 (2017) (“*GSN MO&O*”).

qualifiers and other World Cup qualifiers.<sup>28</sup> Reportedly, NBC paid one billion dollars for the rights to EPL alone.<sup>29</sup> Further, despite NBC Sports' alleged focus only on the EPL, NBC Sports has bid for other leagues recently. In 2011, NBC lost the chance to show the World Cup when it was outbid by Fox.<sup>30</sup> NBC Sports also previously carried MLS until it lost the rights to Fox.<sup>31</sup> NBC Sports has also bid for the rights to broadcast the Mexican National Team's qualifiers for the next two World Cup cycles.<sup>32</sup>

33. NBC has launched an intensive advertising campaign focused on soccer. Witness this screenshot from NBC Sports' soccer landing page:

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<sup>28</sup> See Press Release, *Telemundo Deportes Unveils More than 1,500 Hours of 2018 FIFA World Cup Russia™ Coverage Across All Platforms*, Comcast (Nov. 29, 2017), <http://www.nbcuniversal.com/press-release/telemundo-deportes-unveils-more-1500-hours-2018-fifa-world-cup-russia%E2%84%A2-coverage-across> (stating that “Telemundo Deportes will provide extensive multimedia coverage including more than 500 hours of World Cup-related programming across Telemundo Network and its sister cable network Universo . . . [including] more than 170 hours of programming on Universo.”).

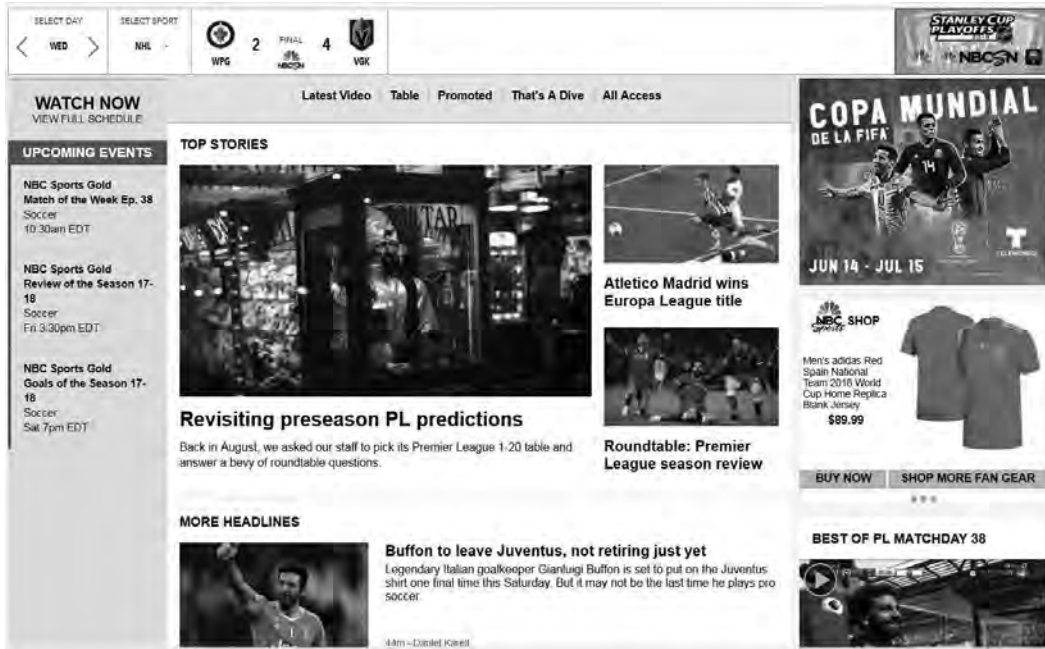
<sup>29</sup> See Tom Teodorczuk, *How NBC Sports is Monetizing Its \$1 Billion Premier League Soccer Investment*, Market Watch (Dec. 19, 2017), <https://www.marketwatch.com/story/how-nbc-sports-is-monetizing-its-1-billion-premier-league-soccer-investment-2017-12-14>.

<sup>30</sup> *Fox Sports Wins World Cup Soccer Bid*, ESPN (Oct. 21, 2011), [http://www.espn.com/sports/soccer/news/\\_id/7130785/fox-sports-wins-bid-espn-nbc-televise-world-cup-2018-22](http://www.espn.com/sports/soccer/news/_id/7130785/fox-sports-wins-bid-espn-nbc-televise-world-cup-2018-22).

<sup>31</sup> Jonathan Tannewald, *NBC to End MLS Deal in 2015; ESPN, Fox Pay \$70 million Per Year for New Rights Package*, Philly Inquirer (Jan. 9, 2014), <http://www.philly.com/philly/blogs/thegoalkeeper/NBC-to-lose-MLS-rights-in-2015-ESPN-Fox-likely-to-share-new-deal.html>.

<sup>32</sup> Alex Muller, *NBC Universal and Telemundo Submit Joint Bid for Mexico National Team TV Rights in US*, World Soccer Talk (Sept. 29, 2017), <http://worldsoccertalk.com/2017/09/29/nbc-universal-telemundo-submit-joint-bid-mexico-national-team-tv-rights-us/>.

## REDACTED—FOR PUBLIC INSPECTION



And this:



34. Equally important, this heavy push is not limited to leagues and games for which NBC Sports has the right, such as EPL. The NBC Sports website covers many non-EPL games, including games to which beIN has exclusive rights. And the online store features the jerseys of formidable players from various soccer leagues.

35. NBC Sports' website emphasizes all aspects of soccer, including non-Premier League games.<sup>33</sup> For instance, on May 19, 2018, the NBC Sports' website headlines were all devoted to the FA Cup, Serie A, and Major League Soccer, all soccer content that NBC Sports does not carry.<sup>34</sup> Additionally, one of NBC Sports' most popular shows and podcast is the "Men in Blazers" show, which covers international leagues that NBC Sports does not carry.<sup>35</sup> The "That's a Dive" podcast with Kyle Martino, part of NBC Sports Podcast Network, covers multiple leagues, including the Champions League, MLS, and USMNT, all content that NBC Sports does not carry. In fact, the landing page of NBC Sports' exclusive EPL content is buried as the last option in NBC Sports' soccer website under the non-intuitive name Rotoworld (as evidenced below).



36. NBC Sports' online store invites users to buy jerseys from scores of national teams and famous players, such as Lionel Messi, who plays in La Liga, Zlatan Ibrahimović, who plays in MLS, and Neymar, who plays in Ligue 1.<sup>36</sup>

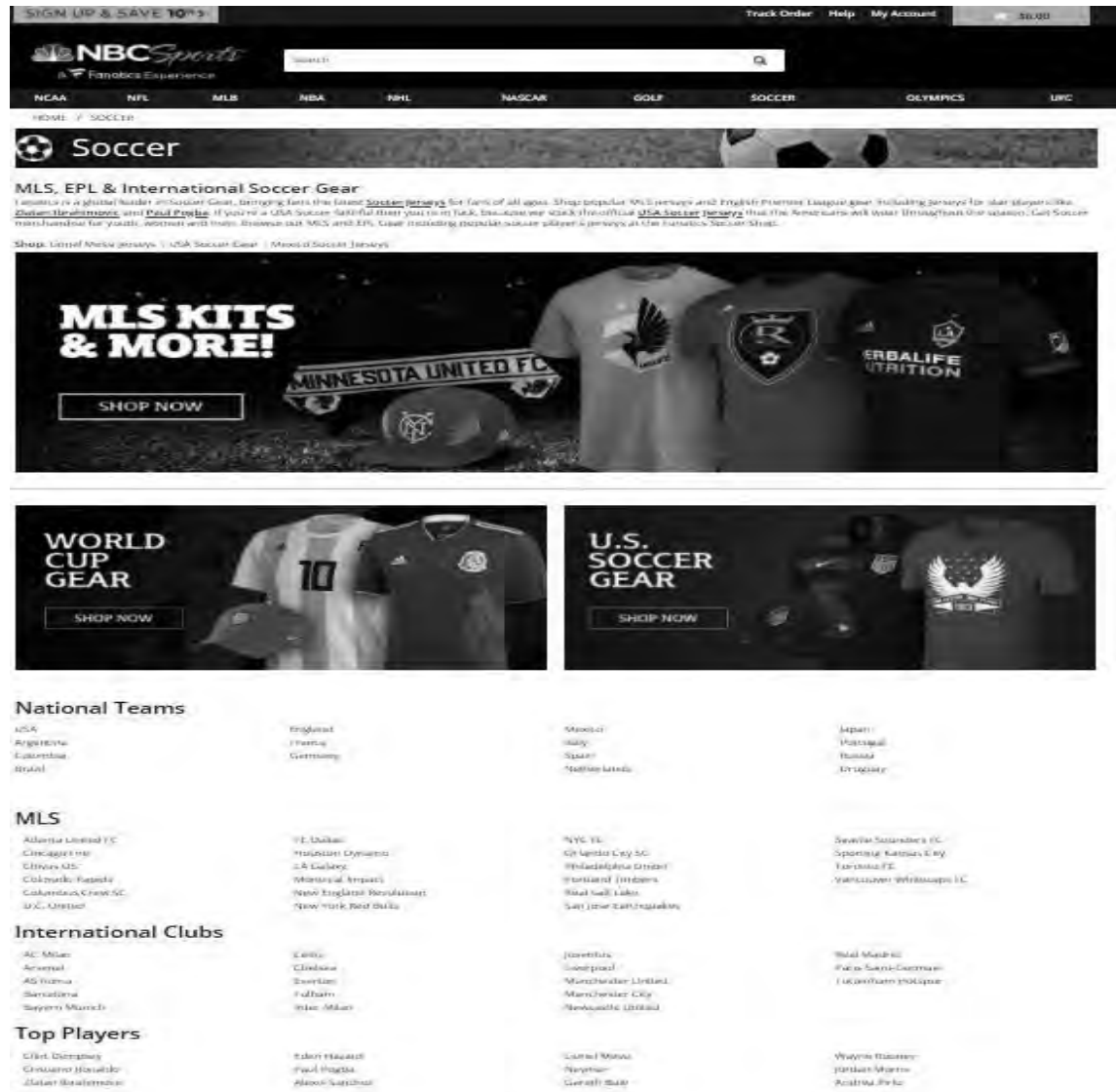
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<sup>33</sup> See *Soccer*, NBC Sports, <https://www.nbcsports.com/soccer> (last visited May 17, 2018) (headlining articles discussing the Italian Serie A and Europa League).

<sup>34</sup> See Screenshots from NBC Sports, attached as Exhibit 5.

<sup>35</sup> See *Men in Blazers*, Wikipedia, [https://en.wikipedia.org/wiki/Men\\_in\\_Blazers](https://en.wikipedia.org/wiki/Men_in_Blazers) ("Men in Blazers is a collaboration of the British duo Roger Bennett and Michael Davies that exists as a website, weekly podcast and NBCSN television show about English Premier League and international soccer 'driven by the belief that Soccer is America's Sport of the Future. As it has been since 1972.'") (last visited May 19, 2018).

<sup>36</sup> See *Soccer*, NBC Sports Shop, [http://shop.nbcsports.com/NBC\\_Soccer](http://shop.nbcsports.com/NBC_Soccer) (last visited May 17, 2018) (featuring jerseys from Cristiano Ronaldo, Lionel Messi, Zlatan Ibrahimović, who all play in leagues that NBC does not carry, and various national teams).



37. One of NBC Sports’ Twitter accounts likewise demonstrates that NBC Sports is focused on “all things soccer.”<sup>37</sup>

<sup>37</sup> See @NBCSportsSoccer, Twitter, <https://twitter.com/nbcsportssoccer?lang=en> (last visited May 17, 2018).





38. On the same day as the FA Cup final between Manchester United and Chelsea, NBC Sports devoted multiple tweets to the retirement of Gigi Buffon, a goalkeeper in the Italian Serie A, even though beIN has exclusive rights to Serie A.<sup>38</sup> NBC Sports' Twitter account also dedicated tweets to the FA Cup and the United States men's national soccer team, leagues that NBC Sports also does not carry.<sup>39</sup>

39. The cross-border emphasis on all-things soccer makes sense in light of the player-specific nature of much soccer fandom and the mobility of players.<sup>40</sup> In 2014, the Uruguayan player Luis Suarez left the EPL team Liverpool for La Liga team Barcelona.<sup>41</sup> In 2017, the

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<sup>38</sup> See @NBCSportsSoccer, Twitter, <https://twitter.com/NBCSportsSoccer/status/997922975344152576> (tweeting a video of Buffon's retirement celebration).

<sup>39</sup> See Exhibit 5.

<sup>40</sup> Eric Sahl Reply Decl. ¶ 7, attached as Exhibit 4.

<sup>41</sup> See *Liverpool & Barcelona Agree £75m Deal for Striker*, BBC Sports (July 11, 2014), <https://www.bbc.com/sport/football/28180600>.

Spanish player Alvaro Morata made the reverse move, from Real Madrid to Chelsea.<sup>42</sup>

Enthusiastic fans of these players are likely to follow them to the new league; as for the old team's games, they may or may not continue to watch them, depending on convenience and cost, among other factors.<sup>43</sup>



<sup>42</sup> See Stephen Turner, *Alvaro Morata Signs for Chelsea from Real Madrid on Five-Year Contract*, Sky Sports (July 22, 2017), <http://www.skysports.com/football/news/11668/10956798/alvaro-morata-signs-for-chelsea-from-real-madrid-on-five-year-contract>.

<sup>43</sup> Sahl Reply Decl. ¶ 8.

40. The soccer brand projected by NBC Sports has only become more pronounced with time. A glance at its website reveals that a significant amount of that site’s real estate is occupied by soccer. As another example, in November 2017, NBC Sports organized a day long fan festival in Manhattan featuring Chelsea.<sup>44</sup> In fact, the New York Times has reported that soccer has “redefined” NBC Sports. In the newspaper’s words, the 2015 renewal of EPL rights “was an acknowledgment of how the globally popular league has come to redefine NBC’s sports cable network, NBCSN, and also of the value NBC sees in Americans’ growing appetite for top-shelf European soccer.”<sup>45</sup>

41. And so, to mix sports metaphors, NBC Sports and Universo are mounting a full court press, backed by enormous investment, on soccer. It is no wonder that soccer accounts for an increasing percentage of both networks’ lineup—[[BEGIN CONFIDENTIAL]]

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<sup>44</sup> See Declaration of William Zarakas and Eliana Garcés ¶19, attached as Exhibit 2 (“Brattle Decl.”).

<sup>45</sup> Richard Sandomir, *NBC Retains Rights to Premier League in Six-Year Deal*, New York Times (Aug. 10, 2015), <https://www.nytimes.com/2015/08/11/sports/soccer/nbc-retains-rights-to-premier-league-in-six-year-deal.html>. See also Brattle Decl. ¶ 13.

<sup>46</sup> Complaint ¶ 63.

<sup>47</sup> [[BEGIN CONFIDENTIAL]]

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42. To recap some of the highlights of the comparison: on the one side, we have two networks (beIN, beIN en Español) focused on sports programming with a particular emphasis on soccer; on the other, we have two networks (NBC Sports, Universo) focused on sports programming with a particular emphasis on soccer. One of these networks proudly pronounces it is about “all things soccer.” One third of the other’s top-50 programs, and a full [[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]] were soccer games, even under a gerrymandered calculation. The president of one protests that it is not a soccer network, not because it should be more broadly defined, but rather because it should be defined even more narrowly, as the network of a particular soccer league. All of this spells similarity, not difference. And, as will be seen below, the networks also reach, and target, very similar demographics, and have comparable ratings.

43. These similarities are a far cry from the factual configurations at issue in the Game Show Network complaint. There, the Commission was simply rejecting GSN’s argument that its programming overlaps with that of WE tv (a vendor affiliated with Cablevision) as part of a novel and ill-defined “relationship” genre, and that, “of the 66 shows GSN aired between 2009 and 2011, four shows . . . involved ‘relationship’ elements that allegedly resemble three reality shows on WE tv . . . .”<sup>50</sup> It was reasonable for the Commission to find that relationships do not

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<sup>48</sup> Complaint ¶ 63.

<sup>49</sup> [[BEGIN CONFIDENTIAL]]  
[[END CONFIDENTIAL]]

<sup>50</sup> *GSN MO&O*, 32 FCC Rcd. at 6176 ¶ 50.

constitute a genre. On the other hand, the Commission has clearly acknowledged that sports is a genre. It follows that soccer is an even more clearly defined subgenre.

**C. Comcast Cannot Plausibly Claim that the Programming Lineups Are Not Similarly Situated Because beIN and NBC Sports Show Different Games.**

44. Comcast intimates that “similarly situated” is so exacting a requirement that it is defeated by the fact that beIN provides different games from different leagues than those shown on NBC Sports and Universo.<sup>51</sup> “Similarly situated to” does not mean “identical”<sup>52</sup> or “a facsimile of.” If it did, no two sports lineups could be similarly situated, as virtually all rights to broadcast any game in any sport are exclusive to one network.

45. What is more, despite Comcast’s claims now to the contrary, NBC itself believes that the Spanish, French and Italian league games shown on beIN are similarly situated to the English league games shown on NBC Sports and Universo in that they attract similar audiences; otherwise, the NBC online store would not be selling Lionel Messi jerseys and the NBC Sports website would not be gushing about Neymar, his move from Barcelona (La Liga) to Paris Saint-Germain (Ligue 1) and his potential next move.<sup>53</sup>

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<sup>51</sup> Answer ¶ 27 (“beIN’s only ‘evidence’ of similarity is based on the fact that NBCSN features English Premier League soccer programming, Universo features a slightly broader mix of soccer programming (including World Cup matches), and the beIN networks feature (almost exclusively) continental European soccer programming.”).

<sup>52</sup> *NFL HDO*, 23 FCC Rcd. at 14823 ¶ 75.

<sup>53</sup> See, e.g., Joe Prince-Wright, *Report: Neymar agrees to five-year deal at Paris Saint-Germain*, NBC Sports (July 27, 2017), <https://soccer.nbcsports.com/2017/07/27/report-neymar-agrees-to-five-year-deal-at-paris-saint-germain/>; Matt Reed, *Report: Neymar told teammates he won’t return to PSG next season*, NBC Sports (May 12, 2018), <https://soccer.nbcsports.com/2018/05/12/report-neymar-told-teammates-he-wont-return-to-psg-next-season/>.

**D. The Programming of beIN Attracts Similar Audiences to that of NBC Sports and Universo.**

46. Comcast's emphasis on supposedly different demographics is unavailing as a matter of law and grossly inaccurate as a matter of fact. In fact, the audiences reached by beIN and beIN en Español are very similar to those reached by NBC Sports and Universo respectively. Moreover, to the extent there are some differences, they are in the reverse direction than the one that helps Comcast's case. Even assuming that Comcast were correct, beIN reaches a somewhat younger and more affluent audience—an audience that is, in fact, more attractive to advertisers. But this is not what NBC tells advertisers. What NBC tells advertisers is correct. What Comcast tells the Commission, wrong.

47. Of course, targeted demographics are only one of a number of relevant factors in the Commission's analysis. The way in which demographic differences were addressed in *GSN* and *WealthTV* is consistent with this holistic approach. In *GSN*, the Commission found the proposed similarity between the networks based on novel "reality competition" and "relationship" genres to be unsupported by the facts, even assuming, *arguendo*, that such genres existed. The fact that both the target and actual audience for GSN differed from that of WE tv was merely a buttressing or contributing factor in the Commission's analysis. Likewise, in *WealthTV*, the Administrative Law Judge found that, "MOJO and WealthTV neither aired the same type of programming, nor targeted the same audience."<sup>54</sup>

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<sup>54</sup> Herring Broadcasting, Inc. d/b/a WealthTV, Complainant v. Time Warner Cable Inc. Defendant, *Recommended Decision of Chief Administrative Law Judge Richard L. Sippel*, 24 FCC Rcd. 12967, 12976 ¶ 20 (2009) ("*WealthTV Recommended Decision*").

1. *What Comcast says in its Answer.*

48. In any event, even using its own flawed data, Comcast can only point to slight differences in audience age and wealth between beIN and NBC Sports.<sup>55</sup> For instance, it tries to make a mountain out of a molehill when it states that 67% of beIN's audience is younger than 55,<sup>56</sup> while by its own admission, 53% of NBC Sports' audience is below that age.<sup>57</sup> Comcast therefore admits that the majority of its audience is the same as beIN's.

49. But after declaring slight age differences as dispositive when comparing beIN to NBC Sports, Comcast falls curiously silent on age when it shifts to comparing beIN en Español to Universo. According to Comcast, it is now differences in gender breakdown that are dispositive for the Spanish-language channels.<sup>58</sup>

50. When it comes to soccer, Comcast does not even claim that NBC Sports appeals to an older, less affluent, urban, and more male audience. Instead, Comcast pulls a promotional statement from beIN's website as supposed evidence of its claim: "70% of [Spanish soccer league] La Liga viewers on beIN's English-language channel do not watch [English] Premier League on NBC Sports Network."<sup>59</sup> But this is not a claim that the two programs attract different demographics. It is merely the truism that different soccer fans will often watch different soccer games. That is not surprising. If, for two programs to be similarly situated, they also had to feature the same game or show, similarly situated status would be an elusive chimera, as networks typically have exclusive rights to their programming. "Similarly situated to" does

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<sup>55</sup> Answer ¶ 33.

<sup>56</sup> *Id.* ¶ 33.

<sup>57</sup> *Id.* ¶ 33.

<sup>58</sup> *Id.* ¶ 35.

<sup>59</sup> *Id.* at 3.

not mean “a facsimile of.” The Commission made this very point in the *NFL HDO* case when it resoundingly rejected Comcast’s argument “that a complainant must demonstrate its programming is identical to an affiliated network.”<sup>60</sup>

51. Moreover, what is more telling than the practice of the 70% La Liga viewers is its flipside—the practice of the remaining 30% of these viewers. Evidently, they also watch EPL on NBC Sports. This category includes Suarez fans who continue watching Liverpool games even as they follow their idol to Barcelona, and Morata fans who add Chelsea games to the Real Madrid games they used to watch. And let us consider the picture for NBC Sports and Universo with beIN out of the picture. As Mr. Sahl testifies in his reply declaration, many among the 70% of Spanish La Liga viewers who stay with Comcast will likely start watching EPL games; and many among the other 30%, who watch both already, will likely watch more of NBC’s EPL games.<sup>61</sup> This is a hallmark of similarly situated programming. A claim of discrimination under the program carriage rules does not require that every viewer of one program also watches the other. In fact, the 30% of the beIN viewers who watched EPL games on NBC Sports in 2017 has increased to 50% for the year-to-date in 2018.<sup>62</sup>

2. *What Comcast does.*

52. In any event, Comcast’s allegation that beIN’s demographics skew towards more affluent and younger viewers is plainly wrong. Here are the numbers, which do not tell Comcast’s story. The viewers of both beIN and NBC Sports skew strongly male [[BEGIN CONFIDENTIAL]]

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<sup>60</sup> *NFL HDO*, 23 FCC Rcd. at 14823 ¶ 75.

<sup>61</sup> Sahl Reply Decl. ¶ 13.

<sup>62</sup> See Antonio Briceño Reply Decl. ¶ 9, attached as Exhibit 2.



[[END CONFIDENTIAL]] are the single largest demographic for both networks, and have very similar incomes of [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]<sup>63</sup>—hardly the rich/poor picture painted by Comcast. In other words, the audiences of beIN and NBC Sports are substantially similar. As for beIN en Español and Universo, rather remarkably, the median viewer age for the two networks is exactly the same—[[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]] years old.<sup>64</sup> Median incomes, too, between the networks are similar. Comcast states that more than 75% of Universo households have an income below \$75,000<sup>65</sup>; [[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]].<sup>66</sup>

[[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]].<sup>67</sup>

53. Just as important, in addition to the similarities between the networks’ actual audiences, NBC Sports and Universo target, and aspire to, the same demographic segment as beIN targets.

54. This is shown eloquently by the claims NBC makes to advertisers. A series of NBC “upfronts” (materials provided to potential advertisers) highlight NBC’s efforts to target the Hispanic audience, and particularly Hispanic soccer fans, with a trio of networks, including

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<sup>63</sup> See beIN Comcast Competition Profile, attached as Attachment B to Brattle Decl. (“Competition Profile”).

<sup>64</sup> See *id.*

<sup>65</sup> Answer ¶ 35.

<sup>66</sup> See Competition Profile.

<sup>67</sup> See *id.*

Universo. The upfronts tout four key features of all three of these networks: “high production,” “music & live events,” “digital/social/mobile,” and “sports.”<sup>68</sup> The upfronts feature soccer programming prominently, and World Cup programming specifically, and talk about “building U.S. Hispanic FANS on every screen and in every room of their homes.” Clearly, Comcast has been making a particular push to attract Hispanic sports enthusiasts, a core audience component for the beIN networks.<sup>69</sup>

55. Thus, on the question of NBC Sports’ and Universo’s target demographics, too, the Commission would be better informed by watching what Comcast does than by reading what Comcast says in its Answer.



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<sup>68</sup> See Exhibit 8.

<sup>69</sup> Approximately [[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]] of households viewing beIN and beIN en Español, respectively, are led by some identifying as Hispanic. [[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]] of Universo households report the same.



**E. The Overlap Between the beIN and NBC Networks Is a Multiple of What Comcast Claims.**

56. Being unable to distinguish its networks from those of beIN on their respective demographics, Comcast tries to claim that its networks cannot be similarly situated to beIN's because the *individual viewers themselves* of Comcast's networks do not all watch the beIN networks. Comcast claims that, in the second quarter of 2017, only [[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]] of NBC Sports viewers also viewed beIN and beIN en Español, respectively.<sup>70</sup> Comcast then tries to downplay the fact that [[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]] of Universo viewers also watch beIN en Español by observing that [[BEGIN CONFIDENTIAL]] [[END

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<sup>70</sup> Answer ¶ 37.

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57. But Comcast has once again bootstrapped the more favorable distribution deals its affiliated networks enjoy, including from Comcast itself, to claim that no independent network could ever be similarly situated to any Comcast network. Comcast's discussion of viewership overlap *utterly fails to consider whether those same customers have access to beIN and beIN en Español*. Since beIN is available to only approximately [[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]] million households in the United States, while NBC Sports is available to almost [[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]] million, it is misleading to claim that "only" [[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]] of NBC Sports viewers also view beIN. It is more appropriate to look only at households where both networks are available. In fact, were Comcast to do this, it would find the overlap to be substantial.

[[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]] of beIN viewing households also watched NBC Sports. And the trend is upwards. For the period between April 2017 and March 2018, the number is [[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]]. The data is similar between beIN en Español and Universo. For the same periods, more than [[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]] and [[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]] of beIN en Español viewing households also watched Universo. The overlap between the networks' viewers is illustrated in the chart below.

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<sup>71</sup> *Id.*

[[END CONFIDENTIAL]]

**F. The Relevant Ratings Comparison Shows beIN to Be Comparable to, or More Popular than, NBC Sports and Universo.**

58. Comcast's answer on ratings is even weaker. Comcast's attack here is two-pronged: first, it argues that beIN relies on the wrong ratings to prove the beIN and NBC programming lineups are similarly situated. Second, it claims that ratings do not matter anyway. In the words of its expert, Dr. Lerner: "Moreover, similar ratings for two networks would not in any way imply that the networks compete in a significant way for viewers or advertisers. For example, just because the Food Network and Disney Junior have similar ratings does not mean that the networks compete significantly for viewers."<sup>72</sup>

59. The second argument can be summarily dispatched. In Comcast's view, nothing implies that two networks are similarly situated, and no two networks are. Much as Comcast

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<sup>72</sup> Lerner Decl. ¶ 43.

would like an analysis that leads to a discovery of a world of differences every time, ratings are a powerful factor in comparing two programming lineups.

60. The first argument is equally pernicious: if entertained, it would be an ever-giving reward to Comcast for Comcast's own bad behavior. Comcast relies on ratings that are unadjusted for the size of the audience to which each network has access. Comcast uses these unadjusted numbers to claim, for example, that NBC Sports "outperforms beIN Sports across a number of standard Nielsen metric ratings."<sup>73</sup>

61. But Comcast itself dramatically affects these ratings by [[BEGIN  
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[[END CONFIDENTIAL]].<sup>76</sup> Ratings comparisons that are not adjusted for the dramatic difference in the number of people who could view a program if they want to are akin to comparing apples and oranges. Relying on such comparisons to hold that two programming lineups are not similarly situated is tantamount to giving Comcast the unchecked power of self-pardon.

62. As attested by the Brattle Declaration, the appropriate yardstick for comparing the popularity of two networks' programming lineups is ratings not affected by this difference in

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<sup>73</sup> Answer ¶ 39.

<sup>74</sup> Complaint ¶ 21.

<sup>75</sup> See SNL Kagan, Comcast Packages 4Q 2017 (last accessed May 30, 2018).

<sup>76</sup> See SNL Kagan, Comcast Packages 4Q 2017 (last accessed May 30, 2018).

access.<sup>77</sup> Nielsen's coverage area and [[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]] metrics fit that specification.

1. *Coverage area.*

63. Coverage area is a useful metric because it examines how well a network does when measured against the universe of its own base. Thus, that metric tends to level the playing field between a network with fewer than 30 million subscribers and a network with over 80 million subscribers, and measures each network's popularity within its base.

64. Coverage area ratings demonstrate that both beIN and beIN en Español compare favorably with NBC Sports and Universo. [[BEGIN CONFIDENTIAL]]

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65. Comcast's first line of attack against coverage area ratings is tautological. Dr. Lerner complains that the coverage area ratings between beIN and NBC Sports are much closer than the unadjusted number of viewers of the same networks over the same period.<sup>79</sup> That is precisely the point. What Dr. Lerner faults the coverage area rating with achieving is exactly what must be achieved: level the playing field and allow a comparison of apples and oranges by

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<sup>77</sup> Brattle Decl. ¶ 33.

<sup>78</sup> [[BEGIN CONFIDENTIAL]]

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<sup>79</sup> Lerner Decl. ¶ 30.

[[END

expressing ratings as a proportion of the subscriber base to which each network has access. In the words of the Brattle Declaration, “coverage area comparisons are much more meaningful in this case because they reflect the preferences of MVPD consumers for beIN programing when faced with the choice of electing to watch beIN or some alternative,”<sup>80</sup> and “the coverage area comparisons are the next best measurement of the preferences for beIN relative to similar channels.”<sup>81</sup>

66. Comcast’s next challenge to use of the coverage area ratings is that narrow distribution is essentially beIN’s fault. In other words, Comcast suggests that NBC Sports and Universo are distributed to larger populations of households because they “have a broader array of programming to attract a broader range of viewers.”<sup>82</sup> The inference is that, if only beIN had similar programming to that of NBC Sports and Universo, it would also have achieved broader distribution. And so, according to Comcast, coverage area ratings are an inappropriate gauge.

67. There are a number of major flaws in this argument. Not least, Comcast is seeking to insulate itself from a charge of discrimination based on its discriminatory conduct. It is Comcast’s relegation of beIN to the Siberia of low-distribution packages [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]] that is the main culprit for beIN’s lower penetration. To that, Comcast counters that other distributors treat beIN in the same manner as Comcast does. While this myth will be rebutted in more detail later, here are the main respects in which it is untrue: first, in contrast with Comcast, two major MVPDs place beIN in more widely distributed

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<sup>80</sup> Brattle Decl. ¶ 32.

<sup>81</sup> *Id.* ¶ 33.

<sup>82</sup> Lerner Decl. ¶ 29.



packages, and one OVD places beIN in its most widely distributed package bar none. Second,  
[[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]].<sup>83</sup>

68. Third, Comcast’s pointing of the finger to other distributors and to beIN (everyone but Comcast itself) ignores Comcast’s immense power in dictating industry wide rate levels as the second largest distributor in the nation, and the only one to be vertically integrated.

69. Finally, and just as important, a finding of similarly situated status does not require the programmer to show that it is as powerful as the vertically integrated programmer or that it, too, can gain advantageous terms by tying the programming in question to other, must-have programming.

70. Comcast’s next criticism of the coverage ratings—that they are meaningless in predicting ratings when a programmer is given broad distribution—is shown to be false by a study conducted by beIN. Comcast argues that “specialty sports and Spanish language packages . . . have disproportionately large number of sports fans and Latinos that are more likely to watch the beIN networks than would the overall population, so it is unsurprising that beIN’s coverage area ratings are higher.”<sup>84</sup> If Comcast is “unsurprised” that beIN does better than NBC Sports or Universo in a demographic that in Comcast’s view is somehow skewed, that lack of surprise

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<sup>83</sup> [[BEGIN CONFIDENTIAL]]

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<sup>84</sup> Answer ¶ 41.

should act as a powerful motivator for Comcast to treat the networks in a non-discriminatory manner and give beIN a shot at viewer distribution that would allow the two lineups to compete on an equal footing. While there may be some specialty package viewers who purchase that package, in whole or in part, to watch soccer, there are many who do not. Comcast does not claim otherwise or seek to quantify the two categories of viewers; it merely resorts to dubious ethnic stereotyping. So Comcast's argument is no more than a claim that when you confine a network to a specialty package of comparatively few networks, its ratings among the viewers of this package can, and should, be disregarded.

71. Comcast sets up a strawman when Mr. Litman argues that there is “a mathematical certainty that beIN would not rate as highly if it were in a universe that had proportionately fewer Latinos and sports fans.”<sup>85</sup> In context, the words “mathematical certainty” are a rather transparent euphemism for a lack of empirical data. Even if Mr. Litman were correct, it would prove nothing of relevance. Even assuming that the ratings of beIN would indeed be diluted somewhat if it were carried more broadly, beIN's non-coverage-adjusted ratings would be better because of the broader distribution itself. These ratings would improve even if one viewer who now does not have access to a beIN game decided to watch a single game.

72. But in fact, contrary to Comcast's unsupported speculation, the growth in beIN's ratings when beIN gained in distribution is demonstrably significant. beIN has studied its ratings over time in the Dallas market, where it was given broader distribution by Charter's predecessor Time Warner in 2014. beIN's unadjusted ratings grew significantly upon the broadening of its distribution base and continued to grow at a pace that was more than six fold between June 2014

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<sup>85</sup> *Id.*

and June 2015. Thus, [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]].<sup>86</sup>

73. Finally, Comcast's attempt to dismiss beIN's ratings among sports specialty viewers is even weaker, indeed absurd, because both beIN and NBC Sports provide sports programming. Comcast is essentially arguing that the greater popularity of beIN than NBC Sports among sports package viewers should be ignored because sports viewers naturally skew towards sports. But that is what NBC Sports, too, provides. Sports viewers are the best jury for the popularity of both beIN and NBC Sports. Literally, beIN rivals NBC Sports at its own game.

2. *Another useful metric.*

74. [[BEGIN CONFIDENTIAL]]

[[END

CONFIDENTIAL]].<sup>87</sup>

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<sup>86</sup> Brattle Decl. ¶ 31 & n.27.

<sup>87</sup> Sahl Reply Decl. ¶ 15.

75. [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]].<sup>88</sup>

76. [[BEGIN CONFIDENTIAL]]

[[END

CONFIDENTIAL]].<sup>89</sup>

77. [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]].

78. Mr. Litman also tries to dilute the significance of the [[BEGIN  
CONFIDENTIAL]]

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<sup>88</sup> [[BEGIN CONFIDENTIAL]]

[[END

CONFIDENTIAL]]

<sup>89</sup> Answer ¶ 40.

<sup>90</sup> *Id.*

[[END

CONFIDENTIAL]].<sup>92</sup>

**G. The Higher Fees Received by NBC Do Not Justify Discriminating in NBC's Favor.**

79. Comcast's argument that the beIN and NBC networks are not similarly situated because the NBC networks command much higher fees on a nationwide average basis is another attempt at bootstrapping. Comcast effectively argues that the very fact of discrimination is the reason why Comcast cannot be charged with discriminating. Thus, it argues that NBC Sports commands higher license fees than beIN.<sup>93</sup> This is a key part of beIN's grievance, not a reason why its grievance should be dismissed. Of course, beIN's offer, if accepted by Comcast, would have lessened the fee gap between beIN and NBC that Comcast invokes.

80. The difference in average fees received by the beIN and NBC networks nationwide is at least partly of Comcast's own doing.<sup>94</sup> Comcast never describes what it pays for

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<sup>91</sup> Litman Decl. ¶ 36.

<sup>92</sup> Sahl Reply Decl. ¶ 16.

<sup>93</sup> Answer ¶ 44.

<sup>94</sup> The Commission feared exactly this result in the *2011 Program Carriage Order* promulgating revisions to the most recent program carriage rules. See Revision of the Commission's Program Carriage Rules, *Second Report and Order*, 26 FCC Rcd. 11494, 11517 ¶ 31 (2011) ("2011 Program Carriage Order"), *vacated in part on other grounds by Time Warner Cable Inc. v. FCC*, 729 F.3d 137 (2d Cir. 2013) ("By favoring its affiliated programming vendor on the basis of affiliation, an MVPD can hinder the ability of an unaffiliated programming vendor to compete in the video programming market, thereby allowing the affiliated programming vendor to charge higher license fees and reducing competition in the markets for the acquisition of advertising and programming rights.").

NBC Sports and Universo itself (it invokes industry-wide third party fee estimates instead).<sup>95</sup>

But the inference is clear that Comcast implicitly accepts a key claim of beIN's complaint: it pays NBC Sports more than it pays beIN on a per subscriber basis.

81. With 22.4 million subscribers, Comcast is the nation's second-largest MVPD,<sup>96</sup> and the rates it pays its own networks and beIN's are a large component of the industry-wide rates for both; thus, Comcast tries to, once again, be left free to discriminate precisely because it discriminates.

82. Moreover, to the extent that distributors pay NBC Sports more than they pay beIN, this is also a function of NBC's significant market power. In its negotiations with other MVPDs, NBC is able to wield the hammer of its wide range of must-have programming—including the owned and operated broadcast stations—in order to achieve advantageous deals. beIN does not have that ability.

83. But the lack of market power and the inability to bundle its content with other networks does not make beIN less similarly situated. To find otherwise would be to subvert the very program carriage rules that are meant to guard against the market imbalances that vertical integration produces.

84. Comcast incorrectly states that a complainant must establish that it receives comparable fees to those received by the vertically integrated programming vendor. A comparable fee assessment was not even a part of the Commission's *GSN* decision.<sup>97</sup> As for the

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<sup>95</sup> Answer ¶ 44.

<sup>96</sup> See Press Release, *Major Pay-TV Providers Lost about 305,000 Subscribers in 1Q 2018*, Leichtman Research Group (May 17, 2018), <https://www.leichtmanresearch.com/major-pay-tv-providers-lost-about-305000-subscribers-in-1q-2018/>.

<sup>97</sup> *GSN MO&O*, 32 FCC Rcd. at 6175 ¶ 47.

*NFL* case, Comcast made the inverse of its current argument, arguing that its affiliated networks were paid less per subscriber than the NFL Network and thus could not be similarly situated.<sup>98</sup> That argument failed for the same reason that dooms Comcast’s claim here: the Commission still found that the programming was similarly situated, even though there was a larger disparity in compensation between the NFL Network and Comcast’s affiliated networks than between beIN’s networks and NBC Sports and Universo.<sup>99</sup> While comparable fees are one of the factors that can be considered in assessing if two networks are similarly situated, they are not a dispositive factor. Nor has Comcast adequately pled fee disparity: at most, what is relevant is fees paid by others, not average fees significantly affected by what Comcast itself pays, which Comcast is obviously not willing to divulge and which therefore can only be adduced through discovery.

**H. beIN/beIN en Español Directly Compete Against NBC Sports/Universo for Advertisers.**

85. In answering this point, Comcast ignores a key showing made by beIN in its Complaint. beIN has shown not only that it shares many common advertisers with NBC Sports and Universo, but that many advertisers view the beIN and NBC programming lineups as substitutes for one another. Comcast’s witness Dr. Lerner states that advertiser “overlaps do not imply substitutability (or even similarity) between networks,”<sup>100</sup> but mysteriously dismisses the statement in beIN’s complaint that “the purchase by some of these advertisers of time on beIN

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<sup>98</sup> *NFL HDO*, 23 FCC Rcd. at 14825 ¶ 79.

<sup>99</sup> *Id.* at 14827 ¶ 85.

<sup>100</sup> Lerner Decl. ¶ 47.

has resulted directly in less time bought by them on NBC Sports and Universo, meaning that beIN is a direct substitute for NBC Sports and NBC Universo in the eyes of these advertisers.”<sup>101</sup>

86. Dr. Lerner opines that beIN has provided “no evidence to support” its argument.<sup>102</sup> beIN has in fact provided evidence [[BEGIN CONFIDENTIAL]]

[[END

CONFIDENTIAL]].<sup>103</sup>

87. In any event, Comcast cannot plausibly discount the [[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]] shared advertisers mentioned in the complaint because they are large or because they advertise on other networks, too. First of all, this does not account for the fact that advertisers target certain audiences with different advertisements, as the Commission has recognized.<sup>104</sup> For instance, a major car manufacturer would likely air an advertisement featuring a minivan and its conveniences on a network that targets families. That same manufacturer would likely air an advertisement touting its newest sports car on a network that targets a predominantly young male audience. [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]].<sup>105</sup> This is wrong, as anyone who has watched the same company’s advertisements sees that they vary considerably when on different networks.

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<sup>101</sup> Complaint ¶ 81.

<sup>102</sup> Lerner Decl. ¶ 50.

<sup>103</sup> Complaint ¶ 82.

<sup>104</sup> See *GSN MO&O*, 32 FCC Rcd. at 6178-79 ¶ 60 (stating that advertisers use advertisements to target different audiences).

<sup>105</sup> Answer, Lerner Decl. ¶ 49.



As Mr. Briceño testifies, many large shared advertisers, dismissed by Comcast as too large to matter, have advertising programs tailored to a few networks including the beIN and NBC Sports networks, or limited to beIN and NBC Sports. [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]].<sup>106</sup>

88. And Comcast continues its advocacy in support of the proposition that small independent networks can never successfully claim to be fully similarly situated to Comcast's larger one: "[i]f *only* the [[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]] shared advertisers provided *all* of the advertising on the beIN networks," Comcast scoffs, "this would account for only a tiny fraction of their media spending (one-half of one percent)."<sup>107</sup> Ad time on beIN and beIN en Español is certainly cheaper than on NBC Sports and Universo. But this makes beIN more competitive with NBC advertisers' business, not less so.

89. Larger advertisers cannot disqualify a finding that networks are similarly situated simply because they advertise on many networks. If the Commission were to hold that, it would also effectively disqualify advertisers as a means of demonstrating that networks are similarly situated. Under Dr. Lerner's theory, independent networks would also be punished for attracting large advertisers because it would be impossible for them to then demonstrate that they are similarly situated to any network that happens to also have the same large advertisers. This would lead to absurd results where obtaining large advertisers, which should be a salutary

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<sup>106</sup> Briceño Reply Decl. ¶ 7.

<sup>107</sup> Answer ¶ 47.

achievement for an independent network, would make it easier for a vertically integrated MVPD to discriminate against that independent network.

90. Comcast's reliance on *GSN* is likewise misplaced. That case was decided after lengthy discovery, a hearing, and an Administrative Law Judge decision.<sup>108</sup> A complainant at the *prima facie* stage need not be able to identify all common advertisers or provide in-depth economic analysis on their decisions. Rather, a complainant must demonstrate, as beIN has done here, that the four networks have common advertisers and that beIN is a direct substitute for NBC Sports and Universo in the eyes of advertisers.

91. Most important, Comcast's criticism is wrong on the facts: there are not [[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]] advertisers buying airtime on both the beIN and the NBC networks, as shown in the list attached as Exhibit 1 to Mr. Briceño's declaration, and also reproduced immediately below.

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<sup>108</sup> See *GSN MO&O*, 32 FCC Rcd. at 6163 ¶ 10.

Snapshot of advertisers buying time on both beIN and NBC networks

[[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

92. The list, produced by Nielsen and tracking 2017 Q4 advertising for all networks, includes many small advertisers who do not fit at all the characteristics castigated by Comcast, and for whom the platforms of the NBC and beIN networks are uniquely suitable as well as substitutable for another: [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]].

**I. beIN Is Treated Better by Other MVPDs than Under Comcast's December 13, 2017 Offer.**

93. Comcast claims that its treatment of beIN is akin to that of other distributors. Not so. First of all, in contrast with Comcast, at least two major MVPDs (FiOS and Charter) place beIN in more widely distributed packages, and one OVD (FuboTV) places beIN in its most widely distributed package bar none.<sup>109</sup> Others place beIN in packages that ensure greater

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<sup>109</sup> See Answer ¶ 50 and subsequent chart.

penetration of their subscriber bases than Comcast's Sports Entertainment package and XFINITY Latino packages.<sup>110</sup> In a related vein, Comcast's argument is simply not true.<sup>111</sup> AT&T, DirecTV, Charter, DISH, Altice, Cox, and Verizon all carry beIN and beIN en Español on general entertainment tiers, often in addition to their carriage on specialty tiers.<sup>112</sup> Surely, if such dual carriage cost them money on buy-through packages for the specialty tiers, they would not have made the business decision to do so.

94. Second, [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]].

95. Third, Comcast's attempt to lay blame at the doorstep of other distributors and to beIN (everyone but Comcast itself) ignores Comcast's immense power in dictating industry wide rate levels. It is well known in the industry that Comcast is a trendsetter, and that a distribution decision by Comcast makes it hard to achieve better distribution on other systems. [[BEGIN CONFIDENTIAL]]

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<sup>110</sup> *See id.*

<sup>111</sup> Answer ¶ 63.

<sup>112</sup> Briceño Reply Decl. ¶ 5.

[[END

CONFIDENTIAL]]. The Commission has recognized unconditional MFN clauses are an impediment for independent programmers.<sup>113</sup> Unconditional MFN clauses hamper independent programmers from being able to achieve wide distribution.<sup>114</sup> This is precisely the case here. Under the 2012 agreement between Comcast and beIN, beIN cannot offer unique content opportunities and marketing incentives to other distributors without offering the same to Comcast on an unconditional basis. Specifically, the MFN clause requires that [[BEGIN CONFIDENTIAL]]

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<sup>113</sup> See Promoting the Availability of Diverse and Independent Sources of Video Programming, *Notice of Proposed Rulemaking*, 31 FCC Rcd. 11352, 11353 ¶ 2 (2016) (“Because restrictive contract provisions limit the incentives and ability of independent programmers to experiment with innovative carriage terms and to license their content on alternative, innovative platforms, they deprive consumers of the benefits that otherwise would flow from enhanced competition in the video programming and distribution marketplace.”) (*MFN NPRM*).

<sup>114</sup> *Id.* at 11363 ¶ 19 (“However, we are not persuaded based on the record that such justifications exist for MFN provisions that are unconditional and thus permit ‘cherry picking’ of the best contract terms. Because, as noted above, unconditional MFN provisions entitle an MVPD to the most favorable terms granted to other distributors without obligating the MVPD to provide the same or equivalent consideration in exchange for those terms, such provisions appear designed to discourage or foreclose the wider distribution of video content, including on online platforms.”).

<sup>115</sup> See 2012 Comcast and beIN Agreement, Section 15.1, attached as Exhibit 4 to Complaint.

<sup>116</sup> Sahl Reply Decl. ¶ 17.

[[END CONFIDENTIAL]], it is a significant constraint on beIN's negotiations with other distributors.<sup>117</sup>

96. The result? For the last six years, beIN has been deprived of the opportunity to pursue commonly used means of obtaining additional distribution through unique content opportunities and marketing incentives. As a result, beIN has been landlocked and faced with a circumstance where anything it could consider to drive additional distribution would either be taken by Comcast on an "unconditional" basis, or face a contract dispute with Comcast concerning reasonable substitute consideration.<sup>118</sup>

97. [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]].<sup>119</sup>

98. Finally, and just as important, a finding of similarly situated status does not require the programmer to show that it is as powerful as the vertically integrated programmer or that it, too, can gain advantageous terms by tying the programming in question to other, must-have programming. This, of course, is exactly what NBC does in its negotiations with other distributors. NBC can demand broad carriage for NBC Sports and Universo by using

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<sup>117</sup> Briceño Reply Decl. ¶ 6.

<sup>118</sup> *MFN NPRM*, 31 FCC Rcd. at 11363 ¶ 20 ("The record reflects, moreover, that this category of MFN provisions can apply upward pressure on both wholesale and retail prices for program content by reducing a programmer's incentive to cut its carriage rates to any one distributor out of fear that doing so would require it to reduce the rates charged to distributors with unconditional MFN status without receiving any reciprocal benefits.").

<sup>119</sup> Ken Tolle Decl. ¶ 24, attached as Exhibit 3.

retransmission consent for its all-important owned and operated NBC network stations as a hammer. Comcast has must-have programming, such as its NBC network, the Olympics, and the USA network.<sup>120</sup> For other MVPDs, even large ones, to obtain access to this programming, they must acquiesce to carrying the rest of NBC's programming.<sup>121</sup> This is a widespread phenomenon in the programming market, where just a handful of the largest programmers, including NBC, are able to force MVPDs to accept as many as 65 channels to acquire distribution rights to just a few must-have programming.<sup>122</sup>

99. It is by wielding this power that NBC has achieved broad distribution not only for NBC Sports and Universo but also for such undeniably specialty-taste content such as the SyFy channel.<sup>123</sup>

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<sup>120</sup> See *Businesses*, NBC Universal, <http://www.nbcuniversal.com/who-we-are> (last visited May 19, 2018).

<sup>121</sup> Promoting the Availability of Diverse and Independent Sources of Video Programming, *Notice of Inquiry*, 31 FCC Rcd. 1610, 1616 ¶ 15 (2016) (“*Independent Sources NOI*”) (“In particular, [MVPDs] assert [large media entities] often leverage their marquee programming (e.g., premium channels or regional sports programming) to force MVPDs to carry additional channels that have little or no consumer demand.”).

<sup>122</sup> See Comments of American Cable Association, MB Docket No. 16-41, 14-15 (Mar. 30, 2016) (“ACA Comments”).

<sup>123</sup> See *Independent Sources NOI*, 31 FCC Rcd. at 1616 ¶ 15 (“In particular, [MVPDs] assert [large media entities] often leverage their marquee programming (e.g., premium channels or regional sports programming) to force MVPDs to carry additional channels that have little or no consumer demand.”); see also Daniel Frankel, *Comcast's Behavior in Wave Dispute is 'Outrageous,' ACA Says*, FierceCable (Dec. 21, 2017), <https://www.fiercecable.com/cable/comcast-s-behavior-wave-dispute-outrageous-aca-says> (noting that Comcast's forced bundling and penetration requirements harms competition and that NBCU fees accounted for 21% of one MVPD's package's costs); Chris Mills, *Comcast is Ruining Cheap Cable Bundles, Because Comcast*, BGR (Oct. 16, 2017), <http://bgr.com/2017/10/16/comcast-cheap-cable-bundle-lol-nope/> (“Comcast is forcing small cable companies to bundle NBC Sports into any cable package that reaches more than 15% of a customer's user base.”).

100. Indeed, Comcast has admitted this candidly during its negotiations with beIN.

[[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]].<sup>124</sup> But surely, the fact that

beIN is not in a position to bundle its networks with broadcast network stations and about a dozen other cable networks should not stand in the way of a finding that its programming is similarly situated to that of the two NBC networks. The program carriage rules are intended to contain the power of vertically integrated programmers, not perpetuate it based on tautological justification—the powerful can continue to be powerful—such as the one pressed by Comcast.<sup>125</sup> The bargaining power of the affiliated vendor due to its other content cannot excuse discrimination.

101. In a related vein, small MVPDs cannot afford to carry many independent networks, including because Comcast forces those MVPDs to acquire bundled programming packages.<sup>126</sup> That is an important factor driving beIN's carriage absence in those small networks. By being forced to carry expensive bundles, small MVPDs are unable to then pay for

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<sup>124</sup> Tolle Decl. ¶ 16.

<sup>125</sup> See Comments of American Cable Association, MB Docket 17-214, at 3 (Oct. 10, 2017) (“In particular, Comcast, directly and through its ownership of NBC Universal (‘NBCU’), controls access to significant programming that its rivals must have access to in order to compete with it. This must have programming includes NBC broadcast network owned and operated (‘O&O’) local television stations, the bundle of extremely popular national cable programming networks controlled by NBCU and, in many regions of the country, regional sports networks (‘RSNs’) that hold exclusive rights to carry local and regional sports events. Denying a rival access to even one of these three categories of programming would threaten an MVPD’s ability to compete, as the Commission has recognized.”); see also Jon Brodtkin, *Comcast Found a Way to Raise Other Cable Companies’ Prices, Rivals Say*, Ars Technica (Oct. 12, 2017), <https://arstechnica.com/tech-policy/2017/10/comcast-found-a-way-to-raise-other-cable-companies-prices-rivals-say/>.

<sup>126</sup> ACA Comments at 2-3.



independent networks too. Small MVPDs also have a lack of bandwidth to carry independent programming, as the forced bundling takes up most of their capacity and forces them to drop independent programming.<sup>127</sup> The American Cable Association has also demonstrated that even when a small MVPD has available bandwidth, it often must reserve that bandwidth as large programming syndicates will often demand that the MVPDs carry new spin-off channels, such as college-conference-specific Regional Sports Networks.<sup>128</sup>

#### **IV. COMCAST HAS EFFECTIVELY CONCEDED THE DISCRIMINATORY NATURE OF ITS OFFER**

102. While answering with an unwavering “no” the question of whether there are any programs similarly situated with its own content, Comcast has nothing to say about the question of discrimination itself.<sup>129</sup> It does not deny that it pays NBC Sports far more than it does beIN.<sup>130</sup> It does not deny the preferential distribution afforded to NBC Sports and Universo. It does not deny its refusal to authenticate Comcast customers to beIN’s site while authenticating all of its affiliated networks.<sup>131</sup> And it does not deny that it offered to carry the beIN networks only in Standard Definition while carrying all of its affiliated soccer content in High Definition (thereby effectively conceding the value of the format for the genre).<sup>132</sup>

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<sup>127</sup> *Id.* at 4.

<sup>128</sup> *Id.* at 4-5.

<sup>129</sup> While Messrs. Brayford and Smith state that the allegation is false, they go on to explain it is false because Comcast’s decision was justified by “legitimate business reasons,” Brayford Decl. ¶ 14, or “business considerations.” Smith Decl. ¶ 19. By implication, they do not deny the disparate treatment.

<sup>130</sup> See Answer ¶ 44 (stating that NBC Sports “commands significantly higher license fees” than beIN).

<sup>131</sup> See *Id.* ¶ 76 (acknowledging that Comcast refused beIN’s request for authentication).

<sup>132</sup> *Id.* ¶ 76.

103. In lieu of addressing the discriminatory nature of its December 2017 offer, Comcast instead appears to pardon its own behavior in light of the “early” nature of the negotiations. In Comcast’s words, its offer was only an “initial counterproposal”<sup>133</sup> during an “early-stage negotiation,” an offer that Comcast was “impelled”<sup>134</sup> to make only because of beIN’s “highly unusual”<sup>135</sup> haste in starting negotiations. In Comcast’s view, instead of griping about that initial offer, beIN should have simply continued with the “hard work of reaching agreement across the bargaining table.”<sup>136</sup>

104. The same “you should have waited” approach is expressed on the questions of HD and authentication. Comcast’s failure to propose increased HD carriage [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]].

105. Comcast considered authentication, too, [[BEGIN CONFIDENTIAL]]

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<sup>133</sup> *Id.* ¶ 11.

<sup>134</sup> *Id.* ¶ 7.

<sup>135</sup> Brayford Decl. ¶ 11.

<sup>136</sup> Answer ¶ 79.

<sup>137</sup> *Id.* ¶ 29.

<sup>138</sup> *Id.* ¶ 29.

[[END CONFIDENTIAL]].

106. Of course, “early” is in the eye of the beholder. Certainly, Comcast’s behavior has not instilled in beIN much faith in the value, or even the sense, of waiting. First of all, Comcast did not respond to beIN’s April 2017 offer for eight months, making the hope for a subsequent better offer dim. Second, when it did respond, Comcast let beIN assume that Comcast’s offer was take it or leave it. Thus, on the key question of distribution, Comcast representatives [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]].<sup>139</sup> And then Comcast refused to counter beIN’s two additional offers in February and March of 2018. Was beIN supposed to just wait for Comcast’s discriminatory offer to become *fait accompli*? Neither logic nor, more importantly, Commission rules required beIN to wait until the time was “just right” from Comcast’s perspective. Under the program carriage rules, vertically integrated MVPDs are prohibited from engaging in discriminatory “conduct,” not just signing discriminatory deals, or from making a “final offer” (whatever that might mean) that is discriminatory in nature.<sup>140</sup> There are no early offer or negotiating ploy exceptions to the discrimination ban.

107. Having failed to rebut beIN’s evidence that Comcast’s December 2017 proposal offered to carry the beIN networks on terms less favorable than those given to Comcast’s

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<sup>139</sup> Tolle Decl. ¶ 17.

<sup>140</sup> See Answer ¶ 78 (making a novel argument that beIN’s complaint was somehow impermissibly “anticipatory” because “no final offer for carriage renewal was ever formed”).

affiliated networks, Comcast has conceded these points. Under Commission precedent, facts not refuted are deemed admitted.<sup>141</sup>

**V. COMCAST ATTEMPTS TO IMPOSE A HIGHER STANDARD THAN *beIN* MUST MEET AT THE *PRIMA FACIE* STAGE**

**A. The Question of Benefits to Comcast Properly Belongs to the Merits Stage.**

108. The question of whether Comcast’s conduct was based on legitimate commercial considerations is not properly part of the required discrimination showing at the *prima facie* stage.<sup>142</sup> In arguing the contrary, Comcast confuses the burden of the complainant in the second,

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<sup>141</sup> See *2011 Program Carriage Order*, 26 FCC Rcd. at 11506 ¶ 17 (“If the Media Bureau determines that the complainant has established a *prima facie* case, the Media Bureau will then review the answer (including any attachments) and reply to determine whether there are procedural defenses that might warrant dismissal of the case (e.g., arguments pertaining to the statute of limitations); *whether there are any issues that the defendant MVPD concedes*; whether there are substantial and material questions of fact as to whether the defendant MVPD has engaged in conduct that violates the program carriage rules; whether the case can be addressed by the Media Bureau on the merits based on the pleadings or whether further evidentiary proceedings are necessary; and whether the proceeding should be referred to an ALJ in light of the nature of the factual disputes.”) (emphasis added); *cf.* 47 C.F.R. § 1.724(d) (stating that in common carrier complaints, “[a]verments in a complaint or supplemental complaint filed pursuant to § 1.722 are deemed to be admitted when not denied in the answer”); Fed. R. Civ. P. 8 (“An allegation—other than one relating to the amount of damages—is admitted if a responsive pleading is required and the allegation is not denied.”).

<sup>142</sup> *GSN MO&O*, 32 FCC Rcd. at 6160 ¶ 26; *see also* *Tennis Channel, Inc. v. Comcast Cable Communications, LLC*, Complaint Alleging Program Carriage Discrimination, *Hearing Designation Order and Notice of Opportunity for Hearing for Forfeiture*, 25 FCC Rcd. 14149, 14149 ¶ 2 n.3 (2010) (“We believe the approach taken in *MASN I HDO* and *Classic Sports* is more appropriate for a *prima facie* determination, which requires the Bureau to assess the evidence set forth in the complaint. Moreover, providing a detailed discussion of the defendant’s counter-arguments to each of the claims made by the complainant may incorrectly imply that the Bureau is taking a position on the merits of those arguments. While we do not summarize each of Comcast’s counter-arguments below, our review of the existing record, including Comcast’s Answer, makes clear that there are substantial and material questions of fact as to whether Comcast has engaged in conduct that violates the program carriage provisions of the Act and the Commission’s rules.”) (*Tennis Channel HDO*); *see also* *2011 Program Carriage Order*, 26 FCC Rcd. at 11505 ¶ 14 (“Second, the complaint must contain evidence that the defendant MVPD has treated the video programming provided by the complainant programming vendor differently than the similarly situated video programming provided by the programming vendor

merits stage with the complainant's burden at the first, *prima facie* stage of a program carriage proceeding. Thus, Comcast cites *Tennis Channel* for the proposition that a complainant's burden includes the obligation to establish that the increased payment and expanded carriage it has demanded would yield a "net benefit" to the MVPD and, therefore, that the MVPD's business justification is simply a pretext for discriminatory intent.<sup>143</sup> But this statement refers to the complainant's burden at the merits stage.<sup>144</sup> This is made clear by the *Tennis Channel HDO* decision itself. While Comcast put forward justifications for its treatment of the Tennis Channel, they were not considered by the Media Bureau in the *prima facie* stage.<sup>145</sup> Rather, they were considered, and found wanting, by the ALJ in his initial decision<sup>146</sup> and by the Commission in its

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affiliated with the defendant MVPD with respect to the selection, terms, or conditions for carriage."); *Tennis Channel HDO*, 25 FCC Rcd. at 14160-61 ¶ 19 ("We also find that The Tennis Channel has put forth evidence sufficient to demonstrate for the purpose of establishing a *prima facie* case of program carriage discrimination that Comcast has treated The Tennis Channel differently 'on the basis of affiliation or nonaffiliation' from Comcast's similarly situated, affiliated networks.").

<sup>143</sup> Answer ¶ 58 (citing *Comcast Cable Communications, LLC v. FCC*, 717 F.3d 982, 985 (D.C. Cir. 2013) ("*Tennis Channel Case*").

<sup>144</sup> *Tennis Channel Case*, 717 F.3d at 987 (D.C. Cir. 2013) ("We note that the FCC's Media Bureau found that Tennis had established a *prima facie* case and that the Commission assumed without deciding that in those circumstances Tennis retained the burden of proof throughout the proceeding. We will assume *arguendo*, in favor of the Commission, that the Media Bureau was correct in its finding of a *prima facie* case and that in those circumstances it could shift the burden to the respondent. But that assumption is of no use to the Commission where the record simply lacks material evidence that the Tennis proposal offered Comcast any commercial benefit.") (internal citation omitted).

<sup>145</sup> *Tennis Channel HDO*, 25 FCC Rcd. at 14160-61 ¶ 19 n.101 ("Comcast argues that its differential treatment of The Tennis Channel is justified by various legitimate and non-discriminatory reasons.").

<sup>146</sup> *Tennis Channel, Inc., Complainant v. Comcast Cable Communications, LLC, Defendant, Initial Decision of Chief Administrative Law Judge Richard L. Sippel*, 26 FCC Rcd. 17160, 17195 ¶¶ 75-76 (2011).

*Memorandum Opinion and Order*.<sup>147</sup> While the Court of Appeals found error in these subsequent findings that Comcast had not made such a justification, the Court did not disagree with the Commission on the question of the appropriate stage for that showing, much less did it require the Commission to move the question of legitimate commercial considerations from the merits to the *prima facie* stage in future proceedings. And in the *Game Show Network Reconsideration Order*, the Commission agreed with Cablevision that “[Game Show Network] had the burden of proving *at trial* that Cablevision would have benefited from maintaining [Game Show Network’s] carriage on a broadly penetrated tier.”<sup>148</sup>

109. There is an additional reason why proving the negative is not necessary at this stage. The Commission has stated that “cases would be resolved on the basis of a complaint, answer, and reply,”<sup>149</sup> and has further clarified that the determination of the *prima facie* case would be “based on a review of the complaint (including any attachments) only.”<sup>150</sup> The answer and reply only serve to “determine whether there are procedural defenses that might warrant dismissal of the case (e.g., arguments pertaining to the statute of limitations); whether there are any issues that the defendant MVPD concedes; whether there are substantial and material questions of fact as to whether the defendant MVPD has engaged in conduct that violates the program carriage rules; whether the case can be addressed by the Media Bureau on the merits

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<sup>147</sup> *Tennis Channel, Inc., Complainant v. Comcast Cable Communications, LLC, Defendant, Memorandum Opinion and Order*, 27 FCC Rcd. 8508, 8536-37 ¶ 77 (2012).

<sup>148</sup> *GSN MO&O*, 32 FCC Rcd. at 6185 ¶ 80 (emphasis added).

<sup>149</sup> *TCR Sports Broadcasting Holding, L.L.P., Complainant v. Comcast Corporation, Defendant, Memorandum Opinion and Hearing Designation Order*, 21 FCC Rcd. 8989, 8990 ¶ 4 (2006).

<sup>150</sup> *2011 Program Carriage Order*, 26 FCC Rcd. at 11506 ¶ 17.

based on the pleadings or whether further evidentiary proceedings are necessary; and whether the proceeding should be referred to an ALJ in light of the nature of the factual disputes.”<sup>151</sup>

110. beIN has demonstrated, at a minimum, that there are “substantial and material questions of fact as to whether the defendant MVPD has engaged in conduct that violates the program carriage rules.”<sup>152</sup> And Comcast has failed to prove that there are no substantial or material questions of fact. Instead, Comcast effectively seeks to assign beIN the burden of anticipating Comcast’s arguments.<sup>153</sup> Comcast goes so far as to imply that beIN should have been aware of, and should have countered, the analysis that Comcast provides in its Answer.<sup>154</sup>

111. By the same token, it is absurd for Comcast to charge beIN with not proving that Comcast had discriminatory intent.<sup>155</sup> Without the benefit of discovery, and barring a defendant stupid enough to be videotaped admitting discriminatory intent, a complainant lacks the wherewithal to offer such proof. The Commission has deferred the question of commercial considerations to the merit stage for yet another good, policy reason: if a defendant could get away with hiding its discrimination behind a fig leaf of legitimate commercial considerations without allowing the testing of such claims through the adversarial process, program carriage

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<sup>151</sup> *Id.* at 11506 ¶ 17.

<sup>152</sup> *Id.*; see Answer ¶ 56.

<sup>153</sup> See *Tennis Channel HDO*, 25 FCC Rcd. at 14149 ¶ 2 n.3 (“We believe the approach taken in *MASN I HDO* and *Classic Sports* is more appropriate for a prima facie determination, which requires the Bureau to assess the evidence set forth in the complaint. Moreover, providing a detailed discussion of the defendant’s counter-arguments to each of the claims made by the complainant may incorrectly imply that the Bureau is taking a position on the merits of those arguments.”).

<sup>154</sup> Answer ¶ 71 (“[beIN’s analysis] consists of nothing more than bare assertions that beIN’s excessive renewal demands will increase Comcast’s ability to attract and retain more video subscribers at lower price points—evidence that is not only wrong but that does nothing to undermine the detailed, fact-based analysis done by Comcast.”).

<sup>155</sup> *Id.* ¶¶ 56-57.

grievances would essentially be reduced to a *pro forma* process of complaints denied. This is why the complainant can satisfy the *prima facie* discrimination basis showing not only by the rare occurrence of direct evidence, “such as statements showing a discriminatory intent, [but also] by circumstantial evidence, such as uneven treatment of similarly situated entities.”<sup>156</sup>

beIN has submitted powerful and un rebutted circumstantial evidence of discriminatory harm. It has also submitted powerful evidence on the question of intent: discriminatory intent is the best, if not only, reasonable inference from Comcast’s failure to offer beIN HD resolution: beIN only supplies an HD feed to Comcast, as to other distributors. This means that Comcast undertakes itself the cost of an additional activity—down resolution—in order to *worsen* the signal’s quality.<sup>157</sup> Comcast does not mention, let alone quantify, any bandwidth cost that this purportedly saves. It is a punitive measure whose main, or only plausible, intent is to make the soccer games and other sports programming transmitted in HD by the NBC networks more attractive.<sup>158</sup> There is similarly no plausible motive behind Comcast’s failure to authenticate its subscribers to beIN’s online product while authenticating them on the online products of its NBC affiliates, other than a desire to discriminate in favor of NBC.

112. In any event, discriminatory intent is not a necessary showing even at the merits stage of the proceeding. All that the complainant needs to show at that stage is “(1) that the MVPD discriminated against a programming vendor in the selection, terms, or conditions of carriage on the basis of affiliation or non-affiliation and (2) that the effect of such discrimination

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<sup>156</sup> *WealthTV Recommended Decision*, 24 FCC Rcd. at 12997-98 ¶ 63.

<sup>157</sup> Briceño Reply Decl. ¶ 19.

<sup>158</sup> *Id.*; Tolle Decl. ¶ 19.



unreasonably restrained the ability of the programming vendor to compete fairly”<sup>159</sup> and that the defendant’s conduct is not justified by legitimate commercial considerations.<sup>160</sup>

**B. Comcast’s Discriminatory Offer Was Not Justified by Legitimate Commercial Considerations.**

113. But the evidence already shows that the December 13, 2017 offer of Comcast was not based on such considerations. Specifically, the idea that Comcast made the December 13, 2017 offer because broader distribution of beIN’s network would not yield a “net benefit” for Comcast or would lose Comcast money cannot survive a simple fact—the [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]], broader distribution would be all upside and no downside for Comcast.

114. This is true despite the possibility of a shrinking customer base. While a shrinking base would translate into an increased fee on a per subscriber basis, such attrition does not even begin to offset the huge decrease in per subscriber fees resulting from moving beIN from a package with [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]. Comcast would have to suffer a mass exodus of about [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]] before a move of beIN to that package becomes

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<sup>159</sup> *Tennis Channel, Inc., Complainant v. Comcast Cable Communications, LLC, Defendant, Initial Decision of Chief Administrative Law Judge Richard L. Sippel*, 26 FCC Rcd. 17160, 17203 ¶ 94 (2011); *see also WealthTV Recommended Decision*, 24 FCC Rcd. at 12997 ¶ 61 (“Proof of carriage violations requires a showing that defendants have discriminated against the programming of WealthTV ‘on the basis of affiliation or non-affiliation.’”).

<sup>160</sup> *See Tennis Channel Case*, 717 F.3d at 987.

disadvantageous. Nor has Comcast supplied any evidence that the subscriber base for its broad distribution packages is likely to decline at a faster rate than for the Sports Entertainment package.

115. Indeed, Comcast's subscriber base does not seem to have experienced significant declines, period. In the last year it has changed little, from 22,357,000 video subscribers in Q1 2017 to 22,261,000 in Q1 2018. This is a loss of just 0.43%.<sup>161</sup>

116. Finally, Comcast is protected from the prospect of a declining subscriber base by the [[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]] proposed by beIN.<sup>162</sup>

117. [[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]]. If Comcast genuinely wanted to maximize the benefit to it from carriage of beIN's programming, and if it did not intend to favor its own affiliated programming over beIN's programming, it would have done exactly that—[[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]], Comcast

does not point to any additional cost that such broader distribution would produce.<sup>163</sup>

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<sup>161</sup> See Press Release, *Major Pay-TV Providers Lost about 305,000 Subscribers in 1Q 2018*, Leichtman Research Group (May 17, 2018), <https://www.leichtmanresearch.com/major-pay-tv-providers-lost-about-305000-subscribers-in-1q-2018/>.

<sup>162</sup> Briceño Reply Decl. ¶ 22.

<sup>163</sup> Comcast tries to cast aspersions on [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]. See Answer ¶ 82 n.193.

But Comcast has presented no evidence that because of this logic, NBC is shifting its own

118. Comcast's argument that it cannot move beIN to a higher penetration tier without raising rates on its customers also falls apart in the face of Comcast's actual practices. As recently as last year, Comcast increased its fees for its XFINITY packages without adding channels.<sup>164</sup> Comcast has already been increasing its rates with frequency and apparent insouciance. This is not surprising. It reflects the inelasticity of demand that is due to the high switching costs faced by Comcast subscribers and impeding moves to competing distributors, especially the inconvenience or impossibility of leaving a triple play (broadband, phone and video) package and finding not only an alternative video provider but also a broadband provider as well.<sup>165</sup>

119. To escape the logic of the fact that broader distribution entails only benefits to Comcast and no conceivable costs other than competitive harm to its own programming affiliates, Comcast seeks to change the conversation. Instead of defending its offer to beIN and explaining how that offer is justified by its benefit calculus, Comcast entirely shifts the focus to beIN's original offer and attacks that offer as not beneficial and money losing to Comcast. But carriage agreements to [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]] In any event, it is Comcast that chose the [[BEGIN CONFIDENTIAL]] approach for its December 13, 2017 offer.

<sup>164</sup> Paul Resnikoff, *Comcast Substantially Increases 2018 Rates, Says Customers 'Getting More for Their Money,'* Digital Music News (Jan. 3, 2018), <https://www.digitalmusicnews.com/2018/01/03/comcast-increases-2018/>.

<sup>165</sup> Comcast misrepresents Verizon's go90 service by suggesting that it undermines the business case for carriage of beIN. As mentioned above, this is akin to the surprise of Captain Renault discovering there is gambling on the casino premises: Comcast has exactly the same rights as Verizon. [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]].

this proceeding is not about whether beIN's original offer was reasonable, or whether that offer would produce value for Comcast, or whether it is discriminatory. In this respect, Comcast overlooks a key difference from the factual setting of the *Tennis Channel Case*. In that case, the Tennis Channel had made a retiering proposal, Comcast had rejected it, and the Tennis Channel had filed a program carriage complaint. In those circumstances, where at issue was Comcast's rejection of the Tennis Channel offer, it was appropriate to consider whether the rejected offer was justified by a commercial benefit to Comcast.<sup>166</sup> By contrast, what is at issue here is a standalone offer made by Comcast itself.

120. In any event, Comcast's argument that carriage of beIN's offer would lose Comcast money is based on a threadbare analysis that is riddled with errors and omissions, and that, even taken at face value, unwittingly disproves Comcast's own thesis.

121. This analysis, ostensibly prepared by an office within Comcast named Enterprise Business Intelligence or "EBI" {{BEGIN HIGHLY CONFIDENTIAL}}

{{END HIGHLY CONFIDENTIAL}}.

122. The problems start at the beginning. {{BEGIN HIGHLY CONFIDENTIAL}}

{{END HIGHLY  
CONFIDENTIAL}}. But the basis for this number remains cloaked in mystery. {{BEGIN  
HIGHLY CONFIDENTIAL}}

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<sup>166</sup> *Tennis Channel Case*, 717 F.3d at 986-987.

CONFIDENTIAL}}. Thus Comcast does not allow the Commission or beIN to determine whether the {{BEGIN HIGHLY CONFIDENTIAL}}

CONFIDENTIAL}}.

123. And this is hardly the end of the problems bedeviling this analysis. {{BEGIN HIGHLY CONFIDENTIAL}}

CONFIDENTIAL}}.

124. And Comcast assumes without justification that {{BEGIN HIGHLY CONFIDENTIAL}}

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125. Nor does Comcast account for the fact that {{BEGIN HIGHLY CONFIDENTIAL}}

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<sup>167</sup> Brayford Decl. ¶ 16.

CONFIDENTIAL}}. This is a material omission, as broadband providers are known to enjoy a sky high margin of almost 97% on their broadband service.<sup>168</sup> The analysis is riddled with other errors, too, attesting to the haste in its preparation and its unreliability. {{BEGIN HIGHLY CONFIDENTIAL}}

{{END HIGHLY CONFIDENTIAL}}.

126. {{BEGIN HIGHLY CONFIDENTIAL}}

{{END HIGHLY CONFIDENTIAL}}.

127. But even with these errors and omissions, the analysis does not produce the results that Comcast would like. {{BEGIN HIGHLY CONFIDENTIAL}}

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<sup>168</sup> Bruce Kushnick, *Time Warner Cable's 97 Percent Profit Margin on High-Speed Internet Service Exposed*, Huffington Post (Feb. 2, 2015), [https://www.huffingtonpost.com/bruce-kushnick/time-warner-cables-97-pro\\_b\\_6591916.html](https://www.huffingtonpost.com/bruce-kushnick/time-warner-cables-97-pro_b_6591916.html).

<sup>169</sup> Smith Decl. ¶ 12.

{{END HIGHLY CONFIDENTIAL}}.

128. Furthermore, {{BEGIN HIGHLY CONFIDENTIAL}}

{{END HIGHLY  
CONFIDENTIAL}}.

129. {{BEGIN HIGHLY CONFIDENTIAL}}

packages {{END HIGHLY CONFIDENTIAL}}. As Mr. Briceño explains, Comcast would

have a price advantage over competitors, particularly Verizon in key markets such as New York, Boston and Philadelphia.<sup>170</sup>

130. Comcast also complains about [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]].

131. Comcast also seeks to hide its discriminatory conduct by claiming that the  
[[BEGIN CONFIDENTIAL]]

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<sup>170</sup> Briceño Reply Decl. ¶ 24.

<sup>171</sup> Complaint ¶ 49.

<sup>172</sup> Answer ¶ 60.



[[END

CONFIDENTIAL]]

[[BEGIN CONFIDENTIAL]]

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132. Furthermore, Comcast barely acknowledges [[BEGIN CONFIDENTIAL]]

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<sup>173</sup> Tolle Decl. ¶ 20.

<sup>174</sup> See SNL Kagan Profile for NBC Sports, attached as Exhibit 6.

<sup>175</sup> See SNL Kagan Profile for Universo, attached as Exhibit 7.

[[END CONFIDENTIAL]].

133. Comcast engages in logical acrobatics when it argues that, if passionate beIN fans have already left Comcast’s Sports Entertainment package to get beIN more cheaply elsewhere, the carriage of beIN on Comcast’s Digital Starter tier would be of no benefit to Comcast. To begin with, this is a variant of the argument that historical discrimination justifies future discrimination—an argument that the Commission has rejected.<sup>176</sup> But in fact, the benefit to Comcast exists and is concrete: if Comcast includes beIN in the [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]] package, beIN fans who left because the cheapest way of receiving both beIN networks on Comcast was by paying \$59.98<sup>177</sup> a month, would now be able to receive beIN on the [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]] and thus may be lured back to Comcast. And future beIN fans would be attracted to Comcast in the first place. On the other side of the ledger, the loss of Sports Entertainment package subscriptions from the move of beIN to a broader distribution would be modest under Comcast’s own analysis.

## **VI. COMCAST HAS UNREASONABLY RESTRAINED beIN’S ABILITY TO COMPETE**

134. Comcast argues that beIN’s Complaint was filed both too early and too late.<sup>178</sup> Too early to show that Comcast’s conduct has the effect of “unreasonably restraining the ability of [beIN] to compete fairly” because four and half months remained on the current contract

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<sup>176</sup> *NFL HDO*, 23 FCC Rcd. at 14826 ¶ 81 (rejecting Comcast’s argument that differences in distribution of affiliated networks arising from historic treatment of the same were legitimate “business justifications” for disparate carriage decisions).

<sup>177</sup> Briceño Decl. ¶ 26.

<sup>178</sup> See Answer at 58-64.

term.<sup>179</sup> Too late to make the ability to compete prong irrelevant because the Comcast-NBCU consent decree had expired two months prior. But Comcast is wrong on both counts. The December 13, 2017 offer would unreasonably restrain, and has already restrained, beIN’s ability to compete. Among other things, the lack of broader distribution, lack of authentication to beIN’s online product, and even lack of HD resolution—the minimum expected quality for sports events today—will hamper, and is today hampering, [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]. As the Brattle Declaration attests, beIN has been hurt in its “ability to compete for viewers and advertisers.”<sup>180</sup>

**A. beIN’s Claim of Competitive Injury Is Not Premature.**

135. Comcast’s primary argument on the first point—that the restraint on beIN’s ability to compete is “anticipatory” because beIN has not accepted Comcast’s offer—is flawed as a matter of law. If it were right, no programmer could file a discrimination complaint unless it accepted the discriminatory offer, suffered its consequences, and then filed a complaint pointing to its suffering. Yet the Commission clearly wanted to allow programmers to complain against discriminatory offers without accepting them.

136. The Commission gave three possible triggering events for filing a complaint. First, a video programming vendor may file a complaint after entering into a contract that

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<sup>179</sup> 47 C.F.R. § 76.1302(h)(3)(iii)(A). The Complaint was filed on March 15, 2018. The parties’ current carriage agreement expires at midnight on July 31, 2018.

<sup>180</sup> Brattle Decl. ¶¶ 67-74.

allegedly violates the program carriage rules.<sup>181</sup> Second, a video programming vendor may file a complaint if an MVPD offers to carry the vendor's programming on terms that violate the program carriage rules and the offer is unrelated to any existing contract between the two.<sup>182</sup> The second prong can only mean that the Commission intended to give an independent programmer the opportunity to file a complaint during negotiations. To find otherwise would be to read Section 73.1302(h)(2) from the Commission's rules entirely. This makes sense, since the rules provide relief for programmers that experience discriminatory "conduct," not just those subject to discriminatory contracts.<sup>183</sup> It would also be absurd to require a programmer who has received this offer to accept it, thus making the harm real and non-"anticipatory" in Comcast's world view, and only then file a complaint.

137. Commission precedent supports this reading.<sup>184</sup> Comcast even concedes as much.<sup>185</sup> But then Comcast tries to posit some maximum time frame in advance of contract

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<sup>181</sup> 47 C.F.R. § 76.1302(h)(1) ("The multichannel video programming distributor enters into a contract with a video programming distributor that a party alleges to violate one or more of the rules contained in this section.").

<sup>182</sup> 47 C.F.R. § 76.1302(h)(2) ("The multichannel video programming distributor offers to carry the video programming vendor's programming pursuant to terms that a party alleges to violate one or more of the rules contained in this section, and such offer to carry programming is unrelated to any existing contract between the complainant and the multichannel video programming distributor.").

<sup>183</sup> 47 CFR § 76.1302(h)(1) ("Any video programming vendor . . . aggrieved by *conduct* that it believes constitute a violation of the regulations set forth in this subpart may commence an adjudicatory proceeding at the Commission to obtain enforcement of the rules through the filing of a complaint.") (emphasis added); *id.* § 76.1301(a) ("No multichannel video programming distributor shall engage in conduct the effect of which is to unreasonably restrain the ability of an unaffiliated video programming vendor to compete fairly by discriminating in video programming distribution on the basis of affiliation or non-affiliation of vendors in the selection, terms, or conditions for carriage of video programming provided by such vendors.").

<sup>184</sup> Implementation of Sections 12 & 19 of the Cable Television Consumer Protection & Competition Act of 1992, Development of Competition & Diversity in Video Programming Distribution & Carriage, *Second Report and Order*, 9 FCC Rcd. 2642, 2652-53 ¶ 25 n.45 (1993)

expiration before a complaint could be brought.<sup>186</sup> But if the Commission believed that such a time frame were appropriate, the rules would provide for one. Indeed, Comcast’s worldview would require beIN to risk a contract expiration while its complaint was yet pending before the Commission. This is an absurd result and essentially reads the Section 76.1302(h)(3) out of the Commission’s rules.

138. Comcast tries to cast its argument in a cloak of credibility by selectively citing the facts. Yes, the Comcast offer in question was made eight months before the contract expiration date. But that was nearly *eight months after* beIN approached Comcast to begin carriage negotiations and represented the first and only offer Comcast has made. Between Comcast’s December 13, 2017 offer and beIN’s March 15, 2018 complaint, Comcast *made no other offer* despite beIN’s repeated attempts at engagement and beIN’s own proposals to Comcast during this time, all of which went unanswered by Comcast in the form of any counterproposal.<sup>187</sup> It is not that beIN has “deemed” further negotiations fruitless.<sup>188</sup> It is that Comcast has made them appear fruitless by refusing to respond to beIN’s proposals with any further offers and instead stringing beIN along for more than a year.

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(“1993 Program Carriage Order”) (“At this time, rather than establish a specific time period for the parties to attempt to resolve the dispute before an aggrieved party may file a complaint at the Commission, we will allow the aggrieved programming vendor to determine the appropriate duration of negotiations. At a minimum, however, the programming vendor must provide the potential defendant ten (10) days to respond to the notice, and allow a reasonable time thereafter—which will vary given the particular circumstances of each case—for negotiations.”).

<sup>185</sup> Answer ¶ 78 n.180 (“Comcast is not suggesting that an offer could not serve as a legitimate triggering event for a discrimination claim under certain circumstances.”).

<sup>186</sup> *Id.*

<sup>187</sup> Answer ¶ 6.

<sup>188</sup> *See Id.* ¶ 79 (“beIN repeatedly claims that any further negotiations would be ‘fruitless,’ but that is because beIN deemed them to be so.”).

139. In any event, as discussed below, beIN’s ability to compete is being restrained already today.

**B. Comcast’s Offer Would Unreasonably Restrain beIN’s Ability to Compete.**

140. Comcast astonishingly claims that beIN cannot demonstrate unreasonable restraint in “today’s highly competitive video market.”<sup>189</sup> Relying on a concurrence from Judge Kavanaugh, which no other judge joined, Comcast claims that the marketplace is so competitive that beIN cannot demonstrate unreasonable restraint.<sup>190</sup> This argument runs aground when confronted with reality. Both the Commission and the Department of Justice recognized that Comcast-NBCU would have both the incentive and ability to harm competitors in 2011.<sup>191</sup> They reached this conclusion despite the fact that both satellite distributors and phone companies had established offerings at the time. And this incentive and ability of large distributors to act against the interests of competition continues to be widely recognized—indeed as recently as two years ago—despite certain households having access to several alternative providers.<sup>192</sup>

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<sup>189</sup> *Id.* ¶ 84.

<sup>190</sup> *Id.* ¶¶ 84-86.

<sup>191</sup> Complaint, *United States v. Comcast Corp., et al.*, Case No. 1:11-cv-00106, 21-22 ¶ 54 (D.D.C. Jan. 18, 2011) (“Comcast has an incentive to encumber, through its control of the [joint venture], the development of nascent distribution technologies and the business models that underlie them by denying OVDs access to NBCU content or substantially increasing the cost of obtaining such content. . . . Comcast’s incentives and ability to raise the cost of or deny NBCU programming to its distribution rivals, especially OVDs, will lessen competition in video programming distribution.”).

<sup>192</sup> *See, e.g.*, Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership for Consent to Assign or Transfer Control of Licenses and Authorizations, *Memorandum Opinion and Order*, 31 FCC Rcd. 6327, 6344 ¶ 42 (2016) (“Many [internal] documents indicate that, despite some instances of [BEGIN HIGHLY CONF. INFO.] [END HIGHLY CONF. INFO.], New Charter would have an incentive to harm OVDs that could serve as substitutes for some or all of its video products.”); Complaint, *United States v. Charter Communications, et al.*, Case No. 1-16-cv-00759-RCL, 11-12 ¶ 27 (D.D.C. Apr. 25, 2016) (“In numerous internal documents, Defendants show a keen awareness of the competitive threat that

141. In any event, most consumers are stuck with only a few options for video services, not the “no less than five” casually tossed out by Comcast. And even then, consumers do not move readily between them. Such claims have been notoriously debunked before. Among other things, consumers face high switching costs that deter consumers from switching providers.<sup>193</sup> The Commission has found that only 17.9% of consumers have access to four traditional pay-TV distributors, with most having access to only three such distributors.<sup>194</sup> In all cases, two of these distributors are satellite providers, which for many customers can be unavailable because of line-of-sight or other reasons, especially those in urban areas like much of Comcast’s footprint with more multifamily housing units. And while over-the-top (“OTT”) video distributors are a rising part of the competition, they rely on an underlying broadband connection. Knowing this, cable and telephone distributors bundle their video content with their broadband connections, discounting the price of TV service when it’s purchased with Internet

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OVDs pose. In fact, a TWC presentation from February 2014 illustrated the threat posed by such emerging online competitors as a meteor speeding towards earth.”); Applications of AT&T Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations, *Memorandum Opinion and Order*, 30 FCC Rcd. 9131, 9210 ¶ 210 (2015) (“We find that as the combined entity expands its online offerings, it will have an increased incentive to limit subscriber demand for competitors’ online video content, including through data caps that discriminate against third-party content by exempting its own content from the data cap.”).

<sup>193</sup> See, e.g., *Inside the Box: Customer Service and Billing Practices in the Cable and Satellite Industry*, Minority Staff Report, Senate Permanent Subcommittee on Investigations, at 2 (June 23, 2016) (“As stated in a Time Warner Cable training document, the goal of the retention agent was to ‘do the opposite of what the customer is calling for.’”); *Verizon v. FCC*, 740 F.3d 623, 647 (D.C. Cir. 2014) (stating that the costs of switching include: “early termination fees; the inconvenience of ordering, installation, and setup, and associated deposits or fees; possible difficulty returning the earlier broadband provider’s equipment and the cost of replacing incompatible customer-owned equipment; the risk of temporarily losing service; the risk of problems learning how to use the new service; and the possible loss of a provider-specific email address or website”) (citation omitted).

<sup>194</sup> See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, *Eighteenth Report*, 32 FCC Rcd. 568, 576-77 ¶ 21 (2017).

access and effectively subsidizing their video business.<sup>195</sup> This distorts the market and makes it harder for OTT providers to compete. Achieving wide distribution on MVPDs is thus still crucial to any independent programmer's survival.

142. Third, Comcast's argument would essentially mean that no programmer could ever bring a carriage complaint, as the marketplace would be too competitive for any one MVPD to unreasonably restrain a programmer from competing. Comcast is, once again, effectively asking the Commission to overturn its program carriage regulations and the statutory command of Congress.

143. Fourth, Comcast trots out its argument that beIN lacks overlap in advertisers and that advertisers would not shift their advertising spending from NBC Sports or Universo to beIN.<sup>196</sup> beIN has already demonstrated that it competes with NBC Sports and Universo for advertisers.<sup>197</sup> [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]. Comcast's argument also lacks coherency, as wider distribution will obviously attract more advertising and higher advertising fees. Advertisers want their ads to be seen by as many people as possible. They will naturally gravitate to networks that can provide the most viewers.

144. The Commission has held that the failure to carry unaffiliated networks at the same level as affiliated networks unreasonably restrains the ability to compete because it

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<sup>195</sup> Comcast relies heavily on this tactic. *See, e.g.,* Jon Brodtkin, *Comcast won't give new speed boost to Internet users who don't buy TV service*, ArsTechnica (Apr. 30, 2018), <https://arstechnica.com/information-technology/2018/04/comcast-wont-give-new-speed-boost-to-internet-users-who-dont-buy-tv-service/>.

<sup>196</sup> Answer ¶ 83.

<sup>197</sup> *See supra* Section III.H.



deprives a network of licensing fees that “could be used to improve the network.”<sup>198</sup> Similarly, relegation to specialty tiers has a direct and manifest effect on beIN’s ability to attract and retain advertising dollars.<sup>199</sup> It is not true, as Comcast avers, the beIN has shown “no evidence” to suggest that advertisers would shift their dollars to beIN or vice versa.<sup>200</sup> In fact, beIN gave testimony that [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]].<sup>201</sup> In addition, as Mr. Briceño states in his reply Declaration, the diminution of distribution on Comcast would make it difficult or impossible for beIN to attain the 40 million mark that is considered an important milestone in the industry.<sup>202</sup> For these reasons, the Commission has found that placement on a premier sports tier can impair a network’s ability to compete.<sup>203</sup> This is precisely where Comcast has relegated beIN.

145. beIN has already started suffering many of these harms. [[BEGIN CONFIDENTIAL]]

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<sup>198</sup> *Tennis Channel HDO*, 25 FCC Rcd. at 14161 ¶ 20 (2010) (“The Tennis Channel has put forth evidence sufficient to demonstrate for the purpose of establishing a prima facie case of program carriage discrimination that Comcast’s unwillingness to distribute the network more broadly and its disparate treatment of the network has unreasonably restrained The Tennis Channel’s ability to compete fairly. The Tennis Channel claims that Comcast’s failure to carry the network at the same level offered to Versus and the Golf Channel has impaired the network’s overall distribution and subscription fee revenue, thereby depriving The Tennis Channel of license fees that can be used to improve the network.”).

<sup>199</sup> Briceño Reply Decl. ¶ 29.

<sup>200</sup> Answer ¶ 83.

<sup>201</sup> Complaint ¶ 82.

<sup>202</sup> Briceño Reply Decl. ¶ 30.

<sup>203</sup> *Game Show Network, LLC, Defendant v. Cablevision Systems Corp., Defendant, Hearing Designation Order and Notice of Opportunity for Hearing for Forfeiture*, 27 FCC Rcd. 5113, 5134 ¶ 33 (2012).

[[END CONFIDENTIAL]].<sup>205</sup>

**C. The Consent Decree Applies to an Offer Made Prior to Its Expiration.**

146. Comcast is also wrong that its offer is not subject to the program carriage condition that accompanied Comcast's acquisition of NBC. That offer was made on December 13, 2017, while that condition is still in force. What matters under the condition is the time of the conduct in question, not the date of the complaint. Certainly the Commission did not require allegations of violations of this behavior to be brought to it by the time of the expiration of these conditions. Had the Commission intended such a requirement, it would have said so. Rather, the only time limit on bringing a complaint about such behavior is the statute of limitations—in this case, one year from the date that beIN notified Comcast that it intended to file a complaint, or February 13, 2018.<sup>206</sup> Nor is the absence of such an additional limit surprising. If complaints alleging violations of a condition had to be filed before January 20, 2018, then as a practical matter conduct occurring in the last few months of 2017 would not be reached by the condition, as it would be difficult or impossible to file a complaint alleging such conduct by the condition's expiration date. Such a reading of the condition's term would artificially shorten the life of the condition by many months, and should be rejected.

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<sup>204</sup> Tolle Decl. ¶ 22.

<sup>205</sup> Briceño Reply Decl. ¶ 32.

<sup>206</sup> See 47 C.F.R. § 76.1302(h)(3).

147. Comcast’s reliance on Commission precedent is misplaced. The cases certainly do not support the conclusion that Comcast appears to draw from them.<sup>207</sup> In both *News Corp.* and *The America Channel*, the Commission suspended or revoked the relevant condition because the facts necessitating the condition no longer existed.<sup>208</sup> Because the Commission did so, it felt it necessary to place a particular limit around when further complaints could be filed. This is not the case here, where the opportunity for Comcast to discriminate in favor of affiliated programming has not disappeared (Comcast remains vertically integrated).

**VII. COMCAST’S ATTACKS ON beIN’S OFFER AND NEGOTIATIONS ARE BOTH UNAVAILING AND INACCURATE**

148. Comcast attempts to misdirect the Commission by focusing on beIN’s offer and not its own discriminatory conduct. This is the wrong standard, as it ignores the Commission’s rules, which focus on the MVPD’s treatment of the video programming vendor, not the video programming vendor’s conduct.<sup>209</sup> Comcast is trying to deflect attention from its own discriminatory behavior. In any event, Comcast’s portrait is blurred by omissions, distortions, and misrepresentations:

- [[BEGIN CONFIDENTIAL]]

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<sup>207</sup> Answer ¶ 80 (averring that “[t]he Commission has consistently stated that party-initiated program access and carriage remedies, including complaint-based and arbitration remedies, must be formally *invoked* or *initiated* prior to the condition’s expiration.”) (emphasis in original).

<sup>208</sup> General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee, *Memorandum Opinion and Order*, 24 FCC Rcd. 8674, 8679 ¶ 10 (2009); Comcast Corporation Petition for Declaratory Ruling that The America Channel is not a Regional Sports Network, *Order*, 22 FCC Rcd. 17938, 17946 ¶ 24 (2007).

<sup>209</sup> 47 C.F.R. § 76.1302(d)(3)(iii)(B)(2)(ii) (“[T]he defendant [MVPD] *has treated the video programming provided by the complainant differently than the similarly situated, affiliated video programming* described in paragraph (d)(3)(iii)(B)(2)(i) of this section with respect to the selection, terms, or conditions for carriage.”) (emphasis added).

[[END CONFIDENTIAL]].

- Contrary to Comcast’s insinuation that it has an open mind on distribution of beIN, Comcast [[BEGIN CONFIDENTIAL]]  
CONFIDENTIAL]].<sup>211</sup> [[END
- Comcast states that beIN failed to address [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

- Comcast mischaracterizes beIN’s statement at the March 1, 2018 meeting [[BEGIN CONFIDENTIAL]]  
[[END CONFIDENTIAL]]. beIN’s representatives made no such statement. beIN’s representatives also did not state that [[BEGIN CONFIDENTIAL]]

CONFIDENTIAL]].<sup>214</sup> [[END

- [[BEGIN CONFIDENTIAL]]

CONFIDENTIAL]].<sup>216</sup> [[END

- Comcast states that [[BEGIN CONFIDENTIAL]]

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<sup>210</sup> Tolle Decl. ¶ 5.

<sup>211</sup> *Id.* ¶ 6.

<sup>212</sup> Brayford Decl. ¶ 35.

<sup>213</sup> Tolle Decl. ¶ 7.

<sup>214</sup> *Id.* ¶ 8.

<sup>215</sup> Answer ¶ 17.

<sup>216</sup> Tolle Decl. ¶ 9.

<sup>217</sup> Answer ¶ 18.

[[END CONFIDENTIAL]].<sup>218</sup>

- Comcast states that Mr. Tolle said “it could take weeks to work through these issues” in the March 12, 2018 phone call.<sup>219</sup> [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]].<sup>220</sup>

- On authentication, Comcast again distorts the facts when it states that negotiations for authentication began in 2016.<sup>221</sup> It is more correct to say that beIN had been asking for negotiations for authentication since mid-2013, the year that beIN launched its authenticated offer.<sup>222</sup> [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]].<sup>224</sup>

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<sup>218</sup> Tolle Decl. ¶ 10.

<sup>219</sup> Answer ¶ 19.

<sup>220</sup> Tolle Decl. ¶ 11.

<sup>221</sup> Brayford Decl. ¶ 3.

<sup>222</sup> Tolle Decl. ¶ 12.

<sup>223</sup> *Id.*

<sup>224</sup> *Id.*

**VIII. CONCLUSION**

149. For the reasons set forth above, the Media Bureau should grant beIN's complaint, or alternatively, rule that beIN has made a *prima facie* case and designate the complaint for a hearing.

Respectfully submitted,

/s/

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June 4, 2018

**REDACTED—FOR PUBLIC INSPECTION**

**VERIFICATION OF ANTONIO BRICEÑO**

I, Antonio Briceño, have read beIN's Reply in this matter, and state that, to the best of my knowledge, information, and belief formed after reasonable inquiry, the Reply is well grounded in fact and is warranted under existing law or a good faith argument for the extension, modification, or reversal of existing law. The Reply is not interposed for any improper purpose.



---

Antonio Briceño  
Deputy Managing Director,  
US & Canada  
beIN Sports, LLC

Dated: June 1, 2018

**REDACTED—FOR PUBLIC INSPECTION**

# **EXHIBIT 1**



Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of	)	
	)	
<b>beIN Sports, LLC,</b>	)	MB Docket No. 18-90
Complainant,	)	File No. CSR-8954-P
	)	
v.	)	
	)	
<b>COMCAST CABLE COMMUNICATIONS,</b>	)	
<b>LLC,</b>	)	
And	)	
<b>COMCAST CORPORATION,</b>	)	
Defendants.	)	
	)	
	)	
TO: Chief, Media Bureau	)	

**DECLARATION OF WILLIAM ZARAKAS AND ELIANA GARCÉS, PhD**

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**I. QUALIFICATIONS, ASSIGNMENT AND SUMMARY**

1. Dr. Eliana Garcés is a Principal with The Brattle Group and economist with broad experience in antitrust enforcement and regulatory design. She was in the cabinet of Vice President Joaquín Almunia, the European Commissioner responsible for competition policy in 2010-2014. In that position she supervised antitrust and merger investigations in financial services, information technology, telecommunications, and energy markets. Previous to joining The Brattle Group, Dr. Garcés was the Deputy Chief Economist in the European Commission's Directorate General for Internal Market and Industry where she provided analyses relevant to policy issues involving economic integration and European industrial competitiveness. She also served as a member of the Competition Chief Economist Team. Dr. Garcés has held positions in both government and the private sector, including previous economic consulting experience in the United States. From 2016 to 2017, she was a Visiting Senior Fellow at George Mason University, where she taught and researched regulatory aspects of digital innovation both in the United States and Europe. She holds a Ph.D. in economics from University of California, Los Angeles, a Master's degree in European Economic Integration from the College of Europe (Bruges), and a Licenciatura in Economics from Universidad Autónoma (Madrid).
2. William P. Zarakas is a Principal with The Brattle Group and an expert in economic and regulatory matters in the telecommunications, media and energy industries. He has provided expert reports and testimonies before the FCC on a range of issues, including the economics and feasibility of deploying broadband networks and competitive analysis with respect to the market for business service data (BDS). He has also conducted analyses and provided testimony on several recent horizontal and vertical mergers involving the telecommunications and media industries, including the proposed mergers of Comcast and Time Warner Cable and Tribune Media Company and Sinclair Broadcast Group. Mr. Zarakas has also conducted analyses and provided testimonies on the value of wireless spectrum, and on the distribution of royalties and retransmission fees in the cable and satellite television industries before the Copyright Royalty Judges (Library of Congress). He

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has also provided testimony and expert reports before the Federal Energy Regulatory Commission, the Securities and Exchange Commission, the U.S. Congress, state regulatory agencies, and arbitration panels. He holds an M.A. in economics from New York University and a B.A., also in economics, from the State University of New York.

3. We have been asked by the counsel of beIN Sports LLC (“beIN”) to evaluate from an economic perspective the Answer by Comcast Corporation and Comcast Cable Communications, LLC (together “Comcast”) in docket no. 18-90 in front of the Federal Communications Commission (“FCC”). In particular, we have been asked to assess (1) whether NBC Sports Network (“NBCSN”) and Universo, on the one hand, and beIN Sports and beIN Sports en Español, on the other, are similarly situated; (2) whether Comcast’s carriage offer to beIN Sports and beIN Sports en Español discriminates against beIN due to Comcast’s affiliation with NBC Sports and Universo; and (3) whether this discrimination is expected to further impair the ability of beIN Sports and beIN Sports en Español to compete effectively for viewers and advertisers.
4. Our analysis indicates that NBCSN and Universo, on the one hand, and beIN Sports and beIN Sports en Español, on the other, are similarly situated and compete for the same viewers and advertisers. Comcast and Dr. Lerner presented a contrary view. One of the bases for that view was their reliance on general averages and total viewing statistics. However, it is well known that only a small portion of any network’s programming – that is, “marquee” programming - is economically significant and drives important commercial decisions, and in this regard, NBCSN and Universo and beIN Sports and beIN Sports en Español are highly similar. With this understanding, we would expect that Comcast would provide the beIN networks with carriage terms and conditions similar to those offered to its own affiliated programmers. However, as is evident by this docket before the FCC, this is not the case. Instead, Comcast has offered beIN a sub-optimal and unjustifiably inferior position in its viewing bundles. As analyzed further below, this discriminatory treatment can only be explained by Comcast’s interest in promoting its own affiliated channels over the similarly situated beIN networks, and almost certainly is hurting beIN’s ability to expand its viewership and its appeal to advertisers.

**II. THE BEIN NETWORKS ARE SIMILARLY SITUATED TO NBCSN AND UNIVERSO IN THEIR APPEAL TO VIEWERS AND ADVERTISERS**

5. The beIN networks are similarly situated to NBCSN and Universo in the viewership and advertisers they target for economic profitability. As is shown below, differences in viewership, penetration or other performance statistics are mainly due to differences in distribution deals - notably the historical legacy of NBC distribution contracts, the bundled nature of the NBC distribution model, and the restrictive distribution conditions imposed by Comcast on the beIN networks. These differences do not arise because the Comcast affiliated NBCSN and Universo are somehow dissimilarly situated from beIN Sports and beIN Sports en Español.

**A. THE BEIN NETWORKS, NBCSN AND UNIVERSO USE MARQUEE SPORTS EVENTS TO DRIVE UP THEIR VIEWERSHIP AND PROFITABILITY**

**1. Only a small fraction of the total programming is economically significant**

6. In the context of this proceeding, discriminatory treatment refers to circumstances in which two (or more) cable television channels are “similarly situated” but one of the channels receives sub-optimal treatment (i.e., is relegated to a less preferential viewing package) while the other receives more preferential treatment mainly because it is affiliated with the MVPD. Thus, in this case, a considerable amount of analysis is focused on whether or not beIN’s programming is similarly situated to Comcast’s affiliates, NBCSN and Universo. Comcast’s economic expert (Dr. Lerner) applied a faulty test to compare the beIN networks to NBCSN and Universo and therefore incorrectly concluded that the beIN networks are not similarly situated to NBCSN and Universo. Dr. Lerner’s conclusion was based, in part, on a finding that the beIN networks focus on soccer, whereas NBCSN and Universo “offer a wide variety of programming.” Dr. Lerner then compared the proportions of programming minutes by sub-genres of sports and non-sports for each of the relevant cable television networks.<sup>1</sup>

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<sup>1</sup> Declaration of Dr. Andres Lerner, May 14, 2018, Table 1, p. 11.

However, such an approach masks the actual relevant measure of comparison and thus provides little meaningful information for the purpose of assessing program similarity.

7. The appropriate analysis in determining whether these channels are similarly situated involves comparing economically important programs. That is, the comparison should be among the channel's "marquee" programming which, although it may account for a small portion of any network's total programming, is the key money maker, is highly economically significant, and drives important commercial decisions. Comcast recognized the network defining qualities of marquee programming as part of this proceeding in the declaration of Peter Litman, who pointed out that the profitability of most television networks is driven by the broad appeal and high viewership of a few important programs:

Because a television network has 168 hours per week to program, inevitably much of the programming even on the top sports networks like ESPN is filler – replays, highlight shows, sports talk and the like. The primary value MVPDs see in sports networks is their highest profile or "marquee" programming – that is programming that they promote in their subscriber acquisition campaigns, and that their local ad sales operations highlight to potential advertisers.<sup>2</sup>

8. This is particularly the case for sports channels where, per Mr. Litman, much of the programming is considered "filler." Overall sports content makes up a comparable 88.6% of beIN Sports' programming and 85.9% of NBCSN's programming, but most of it falls in the filler category; the marquee programming occupies a much smaller percentage. Filler content, of course, produces some advertising revenue, but, again, it is small in comparison to the revenues produced by marquee events. Dr. Lerner's comparison of programming sub-genres over-emphasizes the filler content, which is economically inconsequential.
9. Lerner Table 1 is thus not fully informative with respect to advertising dollars and network profitability. Put another way, the filler content of beIN is composed of low appeal soccer games and the filler content of NBCSN is made up of, say, archery. But neither network's filler content is expected to attract wide viewership nor generate sizable advertising revenues.

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<sup>2</sup> Declaration of Peter Litman, May 11, 2018, p. 4.

Instead, the applicable business model for both of these channels involves generating large and profitable viewership from the broadcasting of marquee sporting events.

**2. The beIN networks, NBCSN and Universo all follow a similar programming strategy to drive viewership**

10. Marquee sporting events are well known to attract high viewership levels.<sup>3</sup> It has even been argued that high audience sports events are the only programs keeping cable networks afloat in the face of technological change.<sup>4</sup> The beIN networks, NBCSN and Universo all use popular sports programming to drive their viewership and attract advertisement, and compete with each other via marquee sports events.
11. The programming on the beIN networks and NBCSN and Universo also overlaps in key sporting areas. For example, in 2017 beIN carried the rugby Six Nations Championship that NBCSN is carrying in 2018. In 2017, NBCSN carried the IAAF Diamond League track and field competition that beIN had carried the previous year. Currently they each have rights to two of the most popular soccer leagues in the world: NBCSN holds the rights for English Premier League and beIN holds the rights for Spanish La Liga. Both Universo and beIN broadcast qualifying games for the 2018 FIFA World Cup. NBCSN holds the rights to the cyclist event Le Tour de France, and beIN holds the rights to Il Giro d'Italia. This illustrates the high degree of similarity of the targeted viewership.

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<sup>3</sup> “Super Bowl Myth Exposed: These are Actually the Most-Watched Sporting Events,” PennLive, February 4, 2017,

[http://www.pennlive.com/sports/index.ssf/2017/02/super\\_bowl\\_myth\\_exposed\\_these.html](http://www.pennlive.com/sports/index.ssf/2017/02/super_bowl_myth_exposed_these.html).

<sup>4</sup> “Live sports is one of the primary motivators keeping US consumers tethered to their pay-TV subscriptions.” “Consumer Intelligence Series: I stream, you stream,” Pricewaterhouse Cooper LLP, available <https://www.pwc.com/us/en/advisory-services/publications/consumer-intelligence-series/i-stream-you-stream/pwc-videoquake-i-stream-you-stream.pdf>; “Live sports is the most valuable content on the planet,” said Adam Ware, head of digital media at Tennis Channel, based in Santa Monica. Meg James, “The Rise of Sports TV Costs and Why Your Cable Bill Keeps Going Up,” Los Angeles Times, December 5, 2018, <http://www.latimes.com/business/hollywood/la-fi-ct-sports-channels-20161128-story.html>.



12. The beIN networks' marquee sporting broadcasts cover soccer leagues that are among the best around the world. beIN currently has the rights of Spanish La Liga, Italian Serie A, and French Ligue 1. In 2017, Real Madrid and Barcelona Football Club, both playing in La Liga, were the second and third most valuable sports franchises in the world (only the Dallas Cowboys are worth more).<sup>5</sup> In the same year, Cristiano Ronaldo of Real Madrid and Lionel Messi of Barcelona were the two highest-paid athletes in the entire planet, all sports combined.<sup>6</sup>
13. As is the case with the beIN networks, NBCSN also specializes in sports programming, and has recently invested in the rights for the NHL, Rugby, NASCAR and several other sports including cycling and boxing. The marquee games in those leagues provide the programs with the highest viewership levels.<sup>7</sup> NBCSN also considers European soccer games among its marquee programs. In 2015, NBCSN renewed the rights for six seasons of England's Premier League at a cost of \$1 billion. At the time, the New York Times commented that this was "an acknowledgement of how the globally popular league has come to redefine NBC's sports cable network, NBCSN, and also of the value NBC sees in American's growing appetite for top-shelf European soccer."<sup>8</sup> The deal with England's Premier League illustrates how a small portion of the programming can have disproportionate economic relevance.

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<sup>5</sup> Real Madrid C.F. is worth \$3.65 billion while the FC Barcelona is worth \$3.55 billion. Kurt Badenhausen, "El Clasico: Real Madrid-Barcelona Game Generates More Than \$40 Million For Sponsors," *Forbes Magazine*, April 21, 2017, <https://www.forbes.com/sites/kurtbadenhausen/2017/04/21/el-clasico-real-madrid-barcelona-game-generates-more-than-40-million-for-sponsors/#6c4cb4b74389>.

<sup>6</sup> Kurt Badenhausen, "El Clasico: Real Madrid-Barcelona Game Generates More Than \$40 Million For Sponsors," *Forbes Magazine*, April 21, 2017 <https://www.forbes.com/sites/kurtbadenhausen/2017/04/21/el-clasico-real-madrid-barcelona-game-generates-more-than-40-million-for-sponsors/#6c4cb4b74389>.

<sup>7</sup> "NBCSN Posts Best Year Ever – For Third Year in a Row," NBC Sports Group, December 14, 2015, <http://nbc sportsgrouppressbox.com/2016/12/14/nbc-sports-posts-best-year-ever-for-third-year-in-a-row/>,

<sup>8</sup> Richard Sandomir, "NBC Retains Rights to Premier League: 6-year, billion-dollar deal shows growing appetite in America for Soccer," *International New York Times*, August 12, 2015, <https://www.nytimes.com/2015/08/11/sports/soccer/nbc-retains-rights-to-premier-league-in-six-year-deal.html>.

14. Universo has also invested in sports to attract viewership. This has been a profitable investment, and 17 out of the 50 top viewed programs on Universo have been soccer events.<sup>9</sup> Marquee sporting events across all sports combined comprised 40% of Universo's top 50 programs yet only 11.8% of the network's total programming.<sup>10</sup> This fact illustrates the importance of marquee sports events in driving viewership for Universo as well.
15. In any competition between the beIN networks and NBCSN or Universo, beIN should be well placed due to the quality of its marquee content. For example, in April 2016 beIN Sports en Español broadcasted "El Clásico" (Barcelona vs Real Madrid), a La Liga game that delivered 1,200,000 Total Viewers P2+ (all people age two or older). This game out-delivered every English Premier League match on NBCSN and all Univision Deportes Liga MX matches up to that date in 2016.<sup>11</sup> A beIN press release in 2016 stated:

Among soccer leagues, La Liga marquee matches combined on both beIN SPORTS networks averaged higher than English Premier League matches on NBCSN & NBC Universo by 3% among total viewers and 8% for Adults 18-49.<sup>12</sup>

**B. THE BEIN NETWORKS, NBCSN AND UNIVERSO ALL HAVE TARGETED THE SAME WIDE VIEWERSHIP OF PEOPLE INTERESTED IN SPORTS**

16. beIN Sports, beIN Sports en Español, NBCSN and Universo all seek to attract viewers who are interested in sports. The sports viewer base is very large, ranging from dedicated fans to occasional viewers of important events. According to one survey, sports fans that have at least some interest in one sport represent 85% of the US adult population (approximately 215

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<sup>9</sup> Declaration of Peter Litman, May 11, 2018, p. 17.

<sup>10</sup> Declaration of Peter Litman, May 11, 2018, p. 17. See also Declaration of Dr. Andres Lerner, May 18, 2018, Table 1, p. 11. [[BEGIN CONFIDENTIAL]]  
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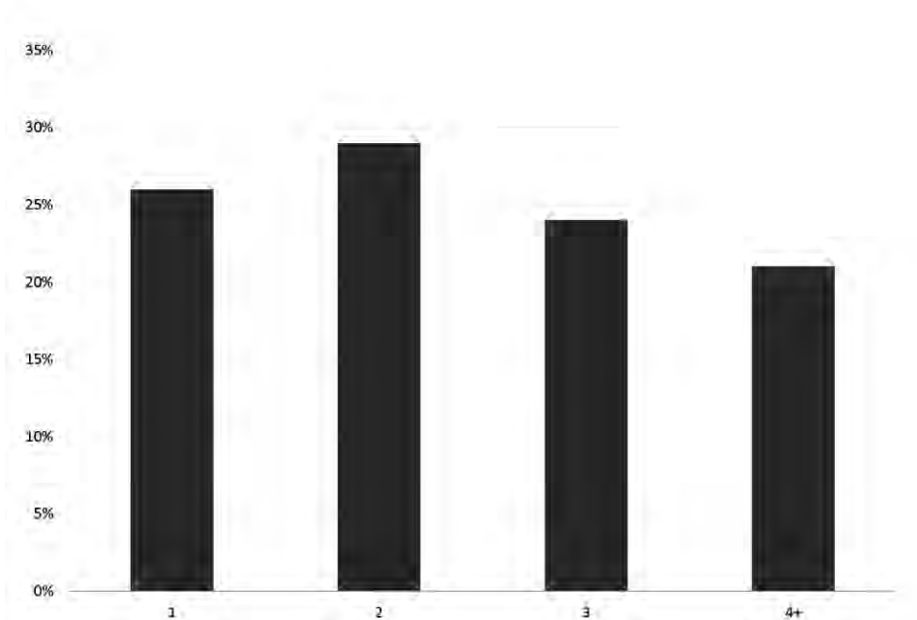
<sup>11</sup> "beIn Sports Leads Q1/Q2 Viewership with Exclusive Coverage of Global Sports," Business Wire, April 19, 2016, <https://www.businesswire.com/news/home/20160419006647/en/beIN-Sports-Leads-Q1Q2-Viewership-Exclusive-Coverage>.

<sup>12</sup> "beIn Sports Leads Q1/Q2 Viewership with Exclusive Coverage of Global Sports," Business Wire, April 19, 2016, <https://www.businesswire.com/news/home/20160419006647/en/beIN-Sports-Leads-Q1Q2-Viewership-Exclusive-Coverage>.

million adults). The most dedicated of fans account for 43% of adults, or 109 million people.<sup>13</sup>

17. The four networks target all types of sports viewers with their marquee content. Many sports viewers enjoy watching more than one sport and/or watch notable or newsworthy sporting events outside of their main sports preferences. Data from Statista (shown below in Figure 1) indicates that 74% of U.S viewers watch more than one sport, and 21% watch four or more.<sup>14</sup>

**Figure 1: Average Number of Sports Watched by Viewers in 2017**



Source: Statista

18. There is also underlying evolution in tastes, with some sports, such as NASCAR, losing viewership over time and some, such as soccer, gaining traction.<sup>15</sup> Sports channels evaluate

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<sup>13</sup> Gina Cavato, “Marketing to Sports Fans US, September 2017,” Mintel Group Ltd., September, 2017, <https://www.aaaa.org/wp-content/uploads/2016/07/Mintel-Marketing-to-Sports-Fans.pdf>.

<sup>14</sup> Statista, “Number of Sports Watched by Sports Viewers in the US 2017,” via Statista.

<sup>15</sup> Dan Singer, “We Are Wrong About Millennial Sports Fans,” McKinsey & Company, October 2017, <https://www.mckinsey.com/industries/media-and-entertainment/our-insights/we-are-wrong-about-millennial-sports-fans>. See for example Exhibit 1.

the mix of sports they offer and adjust accordingly, as NBCSN has started to do with its increase in the investment in soccer.

19. The significant sports rights paid by beIN Sports, beIN en Español, NBCSN and Universo only make sense if the target audience is large and can attract significant viewership and revenues in advertisement. In fact, NBCSN is making a substantial effort to promote the English Premier League in the United States with substantial adjacent programming and even the organization of a daylong fan festival in lower Manhattan with former Chelsea stars.<sup>16</sup>

**C. THE beIN NETWORKS TARGET SIMILAR ADVERTISERS AS NBCSN AND UNIVERSO**

20. By using the same content to drive channel profitability, beIN Sports, beIN Sports en Español, NBCSN, and Universo also compete for the same types of advertisement. beIN's Antonio Briceño stated in his declaration, "beIN and the NBC properties are locked in a constant battle to win more of the business of these and other overlapping advertisers."<sup>17</sup> Mr. Briceño was referring to several key advertisers that beIN shares with NBCSN and Universo, including [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

21. [[BEGIN CONFIDENTIAL]]

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<sup>16</sup> Christopher Harris, "NBC Sports to broadcast Premier League Live from Manhattan in special fan festival," Worldsoccer Talk, November 15, 2017, <http://worldsoccertalk.com/2017/11/15/nbc-sports-broadcast-premier-league-live-manhattan-special-fan-festival/>.

<sup>17</sup> Declaration of Antonio Briceño, March 15, 2018, pp. 13-14.

<sup>18</sup> Declaration of Antonio Briceño, March 15, 2018, p. 13.

[[END CONFIDENTIAL]]

22. [[BEGIN CONFIDENTIAL]]

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23. [[BEGIN CONFIDENTIAL]]

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**D. THE BEIN NETWORKS ARE NO MORE A “NICHE” NETWORK THAN NBCSN AND UNIVERSO**

**1. Soccer is no longer considered to be a niche market**

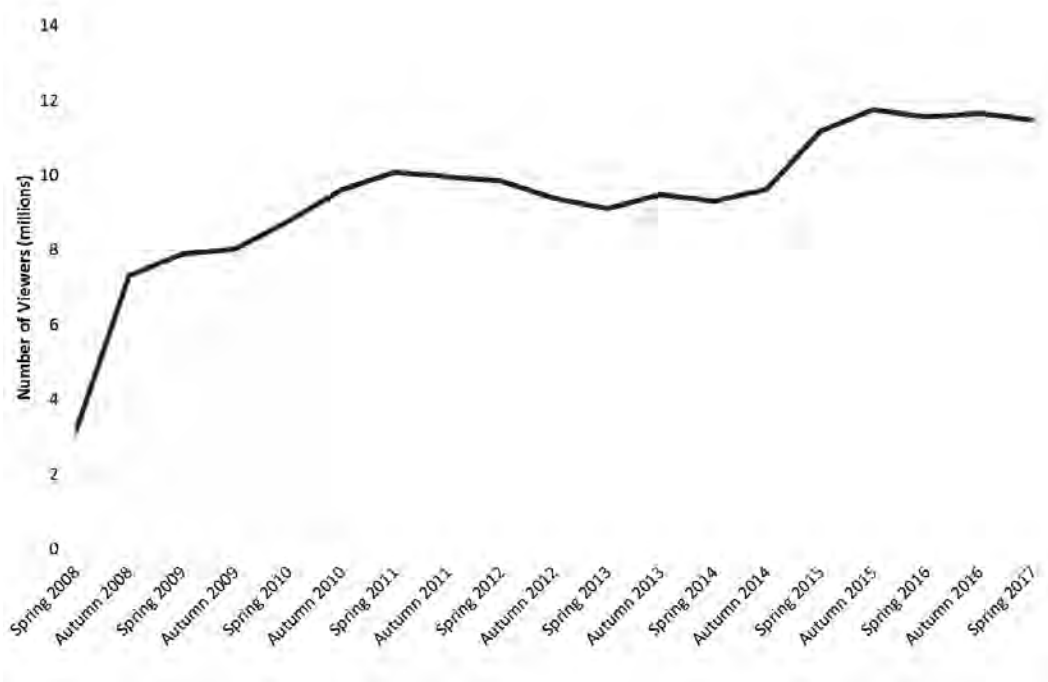
24. Soccer viewership in the U.S has been increasing steadily for years and now ranks with the traditional U.S. spectator sports of football, baseball, basketball, and hockey. A Gallup poll released in January 2018 found that 7% of adults identify soccer as their favorite sport to watch, which exceeds the number who prefer hockey and nearly matches the number of

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<sup>19</sup> *Our Programming Strategy is Driving Growth*, NBC Universal Hispanic Presentation to Advertisers.

adults who favor baseball.<sup>20</sup> Another recent survey found that “almost fifty percent of US citizens have at least a basic interest in soccer games.”<sup>21</sup> As shown in Figure 2, the number of viewers for Major League Soccer (“MLS”), the big U.S.-based soccer league, has risen by nearly four times over the last decade.

**Figure 2: Major League Soccer TV Viewers in the US  
Spring 2008 – Spring 2017**



Source: Statista

25. The international and European leagues, such as those broadcast by beIN, are attractive to U.S. viewers:

<sup>20</sup> Jim Norman, “Football Still Americans Favorite Sport to Watch,” Gallup News, January 4, 2018, <http://news.gallup.com/poll/224864/football-americans-favorite-sport-watch.aspx>.

<sup>21</sup> “European soccer increasingly popular in the USA,” Universitaet Tübingen, January 17, 2018, <https://www.sciencedaily.com/releases/2017/01/170117083030.htm>.

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Among the seven competitions, the greatest interest was indicated for the English Premier League, followed by the UEFA Champions League, the American MLS and the Spanish La Liga.<sup>22</sup>

26. Thus, soccer viewership in the U.S. is not limited to U.S. teams, and non-U.S. soccer broadcasts do not constitute a niche market. Comcast's attempt to characterize European league soccer games as niches lacks context, and is equivalent to saying that the Australian Open is a niche within professional tennis. Many popular sports in the U.S. lack international equivalents, but that does not confine international games to a niche category, especially when it is widely agreed that the best players participate in non-U.S. leagues – which is clearly the case for soccer.
27. NBCSN acknowledges the appeal of soccer to a broad public of occasional viewers and is investing heavily to attract a large – that is, non-niche – audience. Specifically, NBCSN is planning to reach a wide audience with a European soccer league, and is promoting it accordingly, with day-long festival events and endorsements.<sup>23</sup>
28. NBCSN's investment is paying off. Reported audiences for English Premier League games “have now exceeded those of regular season games of the National Hockey League (NHL).”<sup>24</sup> NBC has also aired the Premier League biggest games on the general audience NBC channel indicating that it believes they have general interest and can attract broad viewership.<sup>25</sup>

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<sup>22</sup> “European soccer increasingly popular in the USA,” Universitaet Tübingen, January 17, 2018, <https://www.sciencedaily.com/releases/2017/01/170117083030.htm>.

<sup>23</sup> Tom Teodorczuk, “How NBC Sports is monetizing its \$1 billion Premier League soccer investment,” Market Watch December 1, 2017, <https://www.marketwatch.com/story/how-nbc-sports-is-monetizing-its-1-billion-premier-league-soccer-investment-2017-12-14>.

<sup>24</sup> “European soccer increasingly popular in the USA,” Universitaet Tübingen, January 17, 2018, <https://www.sciencedaily.com/releases/2017/01/170117083030.htm>.

<sup>25</sup> Richard Sandomir, “NBC Retains Rights to Premier League: 6-year, billion-dollar deal shows growing appetite in America for Soccer,” International New York Times, August 12, 2015, <https://www.nytimes.com/2015/08/11/sports/soccer/nbc-retains-rights-to-premier-league-in-six-year-deal.html>.

29. Within soccer, La Liga has at least the same soccer quality, potential for storytelling, global celebrity focus, and rivalry intensity as the Premier League. Absent restrictions in its coverage, there are no apparent reasons why that league can be any less successful in the U.S. than English Premier League. Most of the world's best players such as Lionel Messi, Cristiano Ronaldo, Neymar da Silva Santos Jr. ('Neymar'), play or have played in that league. Neymar recently moved to the French Ligue 1, to which beIN also has the rights. These players have all acquired the status of global celebrities and are recognizable well beyond the world of soccer fans.

**2. Ratings and audience data indicate that the beIN networks are successful new channels appealing to a wide audience**

30. As shown in Figure 3, beIN has experienced steady growth since it started in 2012. [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]] This is greater even than the 26 million viewers achieved by NBCSN after five years of its launch in 1995 and reflects a growth pattern that does not appear to be that of a 'niche' player.<sup>26</sup>

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<sup>26</sup> Declaration of Peter Litman, May 11, 2018, p. 31.



[[BEGIN CONFIDENTIAL]]

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31. In Comcast's Answer, Comcast and its experts point to national coverage ratings to challenge beIN's popularity and viewership. However, Comcast's analysis significantly understates beIN's popularity. Simply put, national ratings are based on how many people watch a given program. While they are meant to inform broadcasters and advertisers on the viewership, they are not a perfect measurement of people's preferences, nor were they designed to be. The Nielsen ratings express a final market outcome generated by the combined effects of access to the channel, cost of the channel, and preference for the channel. If the channel is not available for many potential viewers, there is no way to distinguish the effects of access and preferences on lack of viewership. If the program is overpriced, lack of viewership can also not be assigned to lower quality. In this way, the ratings are an inherently biased measure of preferences since they incorporate the effect of supply conditions. It is erroneous to assign a lower viewership to a stronger preference for other programs when, for example, no choice for the beIN programming is possible due to lack of distribution. [[BEGIN

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32. In addition to national-level ratings, Nielsen also publishes coverage area ratings, which estimate the size of the audience relative to the total number of homes or people that can receive this channel.<sup>28</sup> The coverage area reflects the number or percentage of TV households that could receive a program (i.e., the ability to view).<sup>29</sup> This measurement is an attempt to correct for differences in distribution. As a result, coverage area comparisons are much more meaningful in this case because they more closely reflect the preferences of MVPD consumers for beIN programming when faced with the choice of electing to watch beIN or some alternative.<sup>30</sup>
33. Comcast is misinterpreting the Nielsen data as a means to justify designating beIN as a niche network with specialized viewer appeal. The Nielsen results reflect market outcomes and are not predictive of potential demand. In this regard, coverage area comparisons are the next best measurement of the preferences for beIN relative to similar channels. Even though they may not be directly extrapolated to a national rating due to issues of population composition, coverage area comparisons convey important demand information and are better than national ratings at measuring the relative popularity between networks because they permit a comparison unaffected by differences in distribution. beIN appears to be an attractive

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<sup>27</sup> [[BEGIN CONFIDENTIAL]]

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<sup>28</sup> “Nielsen Media Glossary,” Nielsen Media Research, <http://www.nielsenmedia.com/glossary/terms/C/>.

<sup>29</sup> “Nielsen Media Glossary,” Nielsen Media Research, <http://www.nielsenmedia.com/glossary/terms/C/>.

<sup>30</sup> It is clear that the ratings based on coverage area comparison cannot be extrapolated nationally as the demographics of the population and the preferences vary by region. In order to predict the national rating, one would have to estimate the characteristics of the network that affect consumer preferences and estimate the value that viewers across the country are likely to assign to these characteristics. Such characteristics possibly include the cost, the content of the programming, the availability of online distribution, the portability of the content, the overall design of the consumer interface.

channel for those viewers who have access to it. beIN's lag in national-level Nielsen ratings is more a reflection of its narrow distribution over Comcast than it is a reflection of demand.

34. [[BEGIN CONFIDENTIAL]]

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35. beIN's audience appeal can be explained by the fact that the beIN networks score favorably in many of the dimensions that would determine viewer preference with respect to other sports channels distributed by MVPDs. For example, by aggregating a lot of quality content of one sport, beIN seems to package sports in a way that seems to be appreciated by consumers. Surveys show that consumers are willing to pay the most amount of money for more focused sports channels.<sup>34</sup>

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<sup>31</sup> Declaration of Antonio Briceño, March 15, 2018, p. 8.

<sup>32</sup> Declaration of Antonio Briceño, March 15, 2018, p. 13. [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

<sup>33</sup> Complaint, March 15, 2018, p. 32. [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

<sup>34</sup> Sara Winegardner, "TiVo Report Reveals Viewer Dissatisfaction with MVPDs," Cablefax, September 28 2017, <http://www.cablefax.com/programming/tivo-report-reveals-viewer-dissatisfaction-with-mvpds>.

36. A further example of the appeal of the beIN networks can be seen in viewership of marquee games like a March 2018 bout between Barcelona and Atletico Madrid where it was reported:

The total of 752,000 viewers is far greater than what LaLiga games are accustomed to in the United States . . . . With very little promotion or advertising, the 752,000 almost trumped the much more promoted 2017 MLS Cup final (803,000 on ESPN) and December's Real Madrid-Barcelona Clásico (845,000 viewers on beIN SPORTS and beIN SPORTS en Español combined).<sup>35</sup>

37. Comcast's answer also attempts to portray the beIN networks as a conduit for merely Hispanic content, implying that it would not gain much traction among a non-Hispanic population. While it is true that recent immigrants will be attracted to sports that are very popular in their country of origin, there is very little that is "ethnic" about soccer and the sports that are broadcast on beIN Sports and beIN Sports en Español. Soccer is popular around the world and is a major, if not the pre-eminent, sport in Europe, Africa, the Middle East, and Latin America. As noted above, it is a popular sport in the United States, with viewership continuing to grow rapidly.
38. "Hispanic" or "Latino" packages consist of channels in the Spanish language. These channels are targeted to appeal to Spanish speaking viewers who, in and of themselves, watch a variety of different channels. Spanish speaking viewers are not, and do not consider themselves to be, inherently part of a niche market. Demographically, a significant part of the Hispanic population in the U.S. is bilingual.<sup>36</sup> From a television perspective, they commonly navigate between English speaking and Spanish speaking channels based on programming more so than language. For example, 24% of beIN Sports (an English language channel) viewers are of Mexican descent. Similarly, 71% of Hispanic viewers of beIN

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<sup>35</sup> Christopher Harris, "LaLiga TV ratings surge as 750,000 watch Barcelona-Atleti game on beIN SPORTS," World Soccer Talk, March 8, 2018, <http://worldsoccertalk.com/2018/03/08/laliga-tv-ratings-surge-750000-watch-barcelona-atleti-game-bein-sports/>.

<sup>36</sup> Nate Cohn, "More Hispanics Declaring Themselves White," New York Times, May 21, 2014. This article illustrates the confused debate that can arise when trying to categorize people by ethnicity. <https://www.nytimes.com/2014/05/22/upshot/more-hispanics-declaring-themselves-white.html>.

Sports en Español are bilingual and could watch sports content on a variety of channels, including the more widely distributed NBCSN network.<sup>37</sup> Given this, there are no indications that potential beIN viewership is constrained by ethnicity or native language.

39. Also, data presented by Comcast suggest that beIN Sports and NBCSN share a common viewership. Comcast has stated (in Dr. Lerner’s declaration) that “70% of La Liga viewers on beIN’s English language channel do not watch Premier League on NBCSN” as evidence that its viewership does not overlap with NBC’s channel.<sup>38</sup> However, the data cited actually contradicts this conclusion. Even taken at face value, the remaining 30% of La Liga viewers on beIN Sports in English, then, watch the Premier League on NBCSN, a sizable and not insignificant viewer overlap. The data also suggest that many viewers prefer to watch beIN Sports in English over NBCSN when they have access to both channels. We understand that, for the year 2018 to date, beIN estimates that those 30% of viewers have increased to 50%.
40. From the discussion above, it appears that beIN Sports, beIN Sports en Español, NBCSN, and Universo share economic characteristics and are similarly situated: these channels use major sports events, including European soccer, to attract large viewership; both the beIN networks and the NBC networks invest in quality to further promote this content; and they all compete for advertisers with those popular sports programs. Of these channels, only the beIN networks are constrained in expanding their viewership due to a very restrictive distribution agreement with Comcast.

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<sup>37</sup> Comcast Answer to Complaint, May 14, 2018, Exhibit 8, p. 3.

<sup>38</sup> Declaration of Dr. Lerner, May 18, 2018, p. 26.

**III.COMCAST’S TREATMENT OF beIN IS DISCRIMINATORY AND CONFLICTS WITH ITS CARRIAGE OF NBCSN AND UNIVERSO**

**A. COMCAST’S OFFER INTENTIONALLY AND INACCURATELY REPRESENTS THE BEIN NETWORKS AS “NICHE” OFFERINGS IN ORDER TO DISCRIMINATE AGAINST IT**

**1. Many other distributors treat beIN more favorably than Comcast**

41. Channels that are considered to be specialized or “niche” by an MVPD are sometimes relegated to “add-on” status. In this case, Comcast has designated beIN to such a status. Under the current carriage agreement, Comcast distributes both beIN networks in Standard Definition through a \$4.99 per month add-on package called the Sports and Entertainment Package (“SEP”).<sup>39</sup> In addition, beIN en Español is distributed in a series of add-on packages with Spanish speaking content.<sup>40</sup> [[BEGIN CONFIDENTIAL]]

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42. [[BEGIN CONFIDENTIAL]]

[[END

CONFIDENTIAL]] In contrast, Comcast places NBCSN on the high penetration starter tier

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<sup>39</sup> Declaration of Dr. Lerner, May 11, 2018, p. 45.

<sup>40</sup> Declaration of Dr. Lerner, May 11, 2018, p. 45.

<sup>41</sup> Complaint, March 15, 2018, Exhibit 4, p. 1.

<sup>42</sup> Complaint, March 15, 2018, Exhibit 6, p. 1.

<sup>43</sup> Complaint, March 15, 2018, p. 40-41.

<sup>44</sup> Complaint, March 15, 2018, p. 42.

and Universo on the preferred tier or starter tier, depending on the market, carries both in high definition, and authenticates both for online access.<sup>45</sup>

43. First of all, in contrast with Comcast, according to beIN data provided to us, at least two major MVPDs (FiOS and Charter) provide wider distribution for beIN, and one OVD (FuboTV) places beIN in its most widely distributed package bar none.<sup>46</sup>

44. Comcast's relegation of beIN to add-on "niche" package is also at odds with virtually every other MVPD carrying beIN and beIN en Español. As presented in Attachment C to this report, beIN is included in a general distribution package (i.e., not an add-on package) for all of the MVPDs that carry beIN except one – Mediacom. For example, Verizon carries beIN for all of its tiers except the basic local tier, DIRECTV carries beIN on its 'Premier' general tier, Charter carries beIN on its "Gold" general tier, DISH carries beIN on its "America Top 250" general tier, and Cablevision carries beIN on its "Optimum Gold" general tier.

**2. Comcast fulfils the conditions for a discriminatory strategy against beIN to be profitable**

45. Most carriers other than Comcast adopt the strategy of distributing beIN in a bundle of diverse content and at the same time in a specialty package (in this case with a sports only or a Spanish speaking option). As will be explained below, this strategy typically maximizes profits and viewership for channels that can attract both a dedicated following and casual viewers. The only reason for Comcast not to follow a similar strategy is the benefits that can accrue to the affiliated NBCSN and Universo networks from sidelining the beIN networks.

46. The academic literature has shown that bundling diverse channels can be an efficient way to price in order to increase demand and raise profits.<sup>47</sup> This is the case when customers value

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<sup>45</sup> Complaint, March 15, 2018, p. 40-41.

<sup>47</sup> McAfee, R. Preston, John McMillan, and Michael D. Whinston. "Multiproduct monopoly, commodity bundling, and correlation of values." *The Quarterly Journal of Economics* 104.2 (1989): 371-383. Bakos, Yannis, and Erik Brynjolfsson. "Bundling Information Goods: Pricing, Profits, and

the channels in the bundle with different intensity and rank them in different order. In our case, bundling diverse content is profitable when, for example, some viewers really like sports and watch an occasional movie while other users really value movies or news and watch the occasional game. The economic literature has shown that, with such a distribution of preferences, bundling complementary content differently valued by viewers increases profits and increases viewership for all of the content in the bundle. This pricing efficiency of bundles happens because the preferences of the consumers are averaged over the bundle so that everyone ends up wanting to pay for the bundle and the revenues obtained are higher than if the content were distributed separately. Such price efficiency is the reason why widely distributed packages of all distributors are composed of diverse content. Such commercial strategy increases viewership of specialty channels, and raises profits.<sup>48</sup>

47. Because beIN Sports is a channel that is valued sufficiently highly by an appreciable number of customers, all MVPDs market the network in one of their diverse bundles. Attachment C shows the different packages that carry the beIN networks by distributor. All of them, except Comcast and the very small Mediacom, distribute the beIN networks in bundles of diverse channels. In such bundles, the beIN networks, like the more widely distributed NBCSN and Universo, can reach not only a dedicated fan base but also occasional sports viewers, who are key for the profitability of a sports network. They also contribute to attracting a sports fan base to the channel who will eventually watch other channels as well.
48. Contrary to what would be expected, Comcast proposes to distribute the beIN networks in the narrowest category of packages – reaching fewer than 5 million viewers out of a potential 22.3 million – putting it at odds with other major MVPDs and the popularity of its product. Comcast has several other packages with wider reach such as their Starter, Preferred, and

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Continued from previous page

Efficiency." *Management Science* 45.12 (1999): 1613-1630.; Bakos, Yannis, and Erik Brynjolfsson. "Bundling and Competition on the Internet." *Marketing science* 19.1 (2000): 63-82.

<sup>48</sup> Nalebuff, Barry. "Bundling as an entry barrier," *The Quarterly Journal of Economics* 119.1 (2004): 159-187.



Premier packages that bundle a variety of content of diverse focus and quality. Yet, it elected to not distribute beIN in any of these packages.

49. Bundling a high quality channel (such as the beIN networks) with mostly low quality content reduces viewership.<sup>49</sup> Such a distribution approach may, in fact, increase the cost to viewers of accessing a highly valued channel like beIN Sports or beIN Sports en Español because the bundle needs at least to cover the cost (to viewers) of an add-on. From beIN's perspective, this distribution approach confines it to a situation where it can reach only a very dedicated following willing to pay a high price for it and deprives it from access to the casual viewer. Bundling a product that occupies a high rank for most consumers with lesser value content only makes sense when the distributor wants to use the high valuation of a product to increase the viewership of less valued content. This is normally done for strategic reasons as it imposes a cost on the highly valued content.<sup>50</sup> {{BEGIN HIGHLY CONFIDENTIAL}}  
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**B. COMCAST HAS PROVIDED QUESTIONABLE RATIONALE FOR REJECTING BEIN'S CARRIAGE PROPOSAL**

**1. Comcast's profitability analysis does not support its carriage renewal proposal to beIN**

50. Comcast has represented that its carriage offer to beIN is based on a profitability analysis and that beIN's carriage proposal is entirely unprofitable to Comcast. Comcast (in the declaration of Andrew Brayford) represented that it based its profitability analysis using its Enterprise Business Intelligence ("EBI") team's model. {{BEGIN HIGHLY CONFIDENTIAL}}

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<sup>49</sup> Nalebuff, Barry. "Bundling as an entry barrier" *The Quarterly Journal of Economics* 119.1 (2004): 159-187.

<sup>50</sup> See for example "Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming" before the Federal Communication Commission, MB Docket No. 16-247, January 17, 2017: "large and vertically integrated programmers routinely tie access to must-have programming, including non-replicable sports programming, to other less attractive programming." (Para.33). The same reports notes the dissatisfaction of small and medium sized MVPDs with such commercial practices.

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51. We are not certain of what Mr. Brayford meant by “extremely conservative calculations” as no supporting data, assumptions or other inputs were provided by Comcast. {{BEGIN HIGHLY CONFIDENTIAL}}

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<sup>51</sup> Declaration of Andrew Brayford, May 11, 2018, p. 13.

<sup>52</sup> Declaration of Andrew Brayford, May 11, 2018, p. 13.

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In sum, Comcast's profitability analysis presented by Comcast does not seem reliable enough nor is it solid evidence of the level of beIN's profitability for Comcast.

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53. We used Mr. Brayford's same profitability logic to assess the profitability of carrying beIN under Comcast's counter-proposal to beIN. {{BEGIN HIGHLY CONFIDENTIAL}}

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<sup>53</sup> Declaration of Andrew Brayford, May 11, 2018, Attachment B.

<sup>54</sup> Declaration of Justin Smith, p.12.

54. {{BEGIN HIGHLY CONFIDENTIAL}}

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55. Another argument of Comcast to justify its December 2017 offer is the fact that beIN is offered for free by Verizon, which may render viewers less willing to pay for the channel. But Verizon itself distributes beIN on all its FiOS packages despite offering the content for free on mobile video. Pay TV subscribers do not yet fully substitute for mobile or over the top content, which explains Verizon's dual model of distribution on both supports. This is why the free offer of beIN on Verizon's go90 mobile offer does not detract much value from MVPD distribution of beIN.

**2. Comcast includes a number of “niche” channels in its broadly distributed packages**

56. Comcast and its experts argue that beIN is unsuitable to include in the higher distribution packages in part because it is a “niche” network and therefore not suitable to include in packages targeted to the “broad viewer” market.”<sup>55</sup> Comcast has also asserted that NBCSN and Universo fit the “broad viewer” criterion, but that the beIN networks do not. By this logic, Comcast would not include, for example, Altitude Sports, a regional network focused on Colorado-based professional sports teams, on its most broadly distributed Starter package for that area.<sup>56</sup> Comcast's second most broadly distributed package –Preferred–is also filled with seemingly “niche” sports networks, including the Golf Channel, Outdoor Channel, SEC Network, Sportsman Channel and the Tennis Channel.<sup>57</sup>

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<sup>55</sup> Declaration of Dr. Andres Lerner, May 11, 2018, pp. 18-19.

<sup>56</sup> ‘Compare Xfinity Channel Lineups,’ Xfinity, <https://www.cabletv.com/xfinity/channel-lineup>.

<sup>57</sup> ‘Compare Xfinity Channel Lineups,’ Xfinity, <https://www.cabletv.com/xfinity/channel-lineup>.

**C. COMCAST’S BEHAVIOR MAY BE EXPLAINED BY A STRATEGY TO ENHANCE THE PROFITABILITY OF ITS VERTICALLY INTEGRATED CONTENT-MVPD BUSINESS.**

**1. Comcast is incented to pursue a vertical foreclosure strategy, a well-known strategy highlighted in the economic literature**

57. Vertically integrated companies may have the incentive and ability to deprive an upstream competitor from accessing customers in order to preserve the market share of its own upstream business. This strategy can be profitable when the affected business does not have another equivalent means to access these customers and when customers can substitute across the two competing upstream products. The possibility of such strategy is taken into account in the assessment of vertical mergers, as it can in some circumstances credibly lead to foreclosure of competitors and in extreme cases monopolization.<sup>58</sup>

**a. *beIN cannot replace Comcast with another distributor that would give equivalent access to viewership***

58. Comcast is the second largest MVPD in the United States with 22.5 million subscribers. It is a close second to the leader AT&T which has 25.3 million subscribers.<sup>59</sup> MVPDs like Comcast often act, to some extent, as local monopolies with minimal overlapping coverage by other non-satellite MVPDs:

Most of us live a local monopoly, cable-wise: it might be a Comcast city or a Time Warner town, but we don’t have that much choice with our providers.<sup>60</sup>

59. Other options exist, but do not provide a similar reach. Satellite providers (e.g., DISH) and fiber providers (e.g., Verizon FiOS) remain viable alternatives to cable but have notably less penetration. Other modes of distribution, such over-the top (OTT) distribution of linear TV,

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<sup>58</sup> See for example Salop, Steven C., and Daniel P. Culley, "Revising the US vertical merger guidelines: policy issues and an interim guide for practitioners." *Journal of Antitrust Enforcement* 4.1 (2015) at p.30.

<sup>59</sup> Mike Farrell, "Top 25 MVPD," *Multichannel News*, February 27, 2017, <https://www.multichannel.com/news/top-25-mvpds-411157>.

<sup>60</sup> Kate Cox, "Here’s What the Lack of Broadband Competition Looks Like on a Map," *Consumerist.com*, March 7, 2018, <https://consumerist.com/2014/03/07/heres-what-lack-of-broadband-competition-looks-like-in-map-form.1.html>.

are growing but are nonetheless currently evolving and, despite considerable promise, are not comparable to cable systems.<sup>61</sup> Many of these distributors are also handicapped vis-à-vis cable and fiber operators because only cable and fiber providers can offer broadband access and triple-play broadband, telephone, video packages.

60. As a result of these factors, Comcast largely serves as a gatekeeper for 22.5 million viewers, leaving beIN with little recourse to access those viewers. The beIN networks therefore cannot counter Comcast discriminatory treatment and suffer from a loss of potential viewership as a consequence.

**b. *In practice, viewers substitute between the beIN networks and NBCSN and Universo***

61. Many casual sports viewers will readily switch between sports events. As previously noted in Section II.B, many viewers follow different sports and will substitute across them for non-marquee events. Viewers will shop around to watch the content they like. There is evidence that viewers of marquee content showing on both beIN Sports and NBCSN programs consider these two networks as substitutes. For example, the November 27, 2017 issue of WorldSoccerTalk conveyed that: “Three of the away qualifiers aired on beIN SPORTS, a network that despite being in over 22 million homes in America, cannot generate significant viewing numbers for games featuring the USA.” But in response, a reader noted that:

“I cannot believe that you acted like the 22 million homes was impressive. It’s anything but impressive. 22 million homes puts it dead last amongst all major English speaking cable sports channels. ESPN and FS1 are in four times as many households. Even, FS2 has twice as many households.

The poor ratings during those games were perfectly understandable. Many fans (myself included) watched the game on NBC Universo in Spanish. Some also used Go90.”<sup>62</sup>

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<sup>61</sup> Michael Long, “Live and direct: A look across the OTT landscape,” Sports Pro, October 18, 2017, <http://www.sportspromedia.com/magazine/features/live-and-direct-a-look-across-the-ott-landscape>.

<sup>62</sup> Lawrence Dockery, “TV ratings for US Men’s National Team Down 15% in 2017,” World Soccer Talk, November 27, 2017, <http://worldsoccertalk.com/2017/11/27/tv-ratings-us-mens-national-team-15-2017/>.

62. The fan’s response was insightful in that it illustrates the consequence of limited distribution opportunities and also points to the high substitutability of networks for the viewership of sports content. In this regard, viewers see beIN as comparable (i.e., similarly situated) to ESPN and will shop around the different networks in search of particular content. Furthermore, substitutability of content providers seems to cross language barriers. This flatly contradicts the categorization of beIN Sports and beIN Sports en Español content as ‘niche’ content, and also indicates that the beIN networks are similarly situated to NBCSN and Universo.
63. This substitutability means that Comcast (via NBCSN and Universo) stands to benefit from keeping beIN Sports and beIN Sports en Español at bay. [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

**2. Comcast can discriminate against beIN Sports with minimal loss in its customer base**

64. Comcast has the ability to suppress content that competes with its affiliates while avoiding losing its MVPD subscribers. First, there is a strong legacy effect for cable companies, with 53% of all MVPD subscribers still subscribed to the only cable company available in their area (based on 2014 data). Other options are available to dissatisfied customers, including satellite television and online video options, but these tend to be less appealing to cable TV subscribers.<sup>64</sup> Second, many cable TV subscribers will willingly substitute other programming for curtailed content, except in cases of “must have” content. Third, MVPD multi-product bundles tend to increase the stickiness of consumers. Triple play packages create a higher threshold for MVPD customers before they will switch to other viewing

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<sup>63</sup> Duplicate reach data provided by beIN.

<sup>64</sup> “Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming” before the Federal Communication Commission, MB Docket No. 16-247, January 17, 2017, para. 2.

options.<sup>65</sup> Satellite-based television providers, as key competitors to cable companies for video distribution, cannot offer a competitive broadband connection and are unable to replicate the bundle of services provided by cable companies. This makes it possible for Comcast to cut some of its programming content (i.e., that it does not consider to be must have) without losing a lot of customers.

**3. Comcast also has the incentive to discriminate against beIN**

65. Comcast has an incentive to discriminate against the beIN networks because it stands to benefit from such discriminatory behavior. That is, in the absence of access to the beIN networks, many viewers will turn to substitute channels such as NBCSN or Universo. This increase in the viewership of its affiliated channels increases Comcast's profits and more than compensates for the loss of the additional total viewership beIN could generate if it was more widely distributed.
66. The incentive to promote NBCSN and Universo viewership is further exacerbated by the important investment that NBCSN has undertaken in soccer content, which brings its offering closer to that of beIN Sports. NBCSN has clearly indicated that it wants to capitalize on the increased viewership of soccer.<sup>66</sup> To that effect, it benefits from curtailing access to one of the most efficient providers of that content.
67. Absent these incentives, Comcast would be less inclined to distribute beIN Sports and beIN Sports en Español programming so narrowly. The beIN networks (i) are growing, (ii) specialize in marquee sports content that has become increasingly popular, (iii) attract a very profitable audience for advertising purposes, and (iv) offer the type of online interaction that

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<sup>65</sup> See for example "Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming" before the Federal Communication Commission, MB Docket No. 16-247, January 17, 2017: "In response to statements by Charter and Comcast regarding the offering of wireless services – a move from triple play bundles to quadruple play bundles – SNL Kagan maintains that the move should help reduce churn, with a larger number of products on a single bill typically associated with greater customer retention" (para.52).

<sup>66</sup> Tom Teodorczuk, "How NBC Sports is monetizing its \$1 billion Premier League soccer investment," Market Watch December 1, 2017 <https://www.marketwatch.com/story/how-nbc-sports-is-monetizing-its-1-billion-premier-league-soccer-investment-2017-12-14>.



are increasingly demanded by users. [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

**IV. COMCAST'S DISTRIBUTION AGREEMENT WITH BEIN SPORTS HAS HURT THE LATTER'S ABILITY TO COMPETE FOR VIEWERS AND ADVERTISERS.**

**A. BEIN HAS BEEN HURT IN ITS ABILITY TO COMPETE FOR VIEWERS**

68. The beIN networks are sports networks but their target audience is not limited to only sports channel devotees. beIN's programming continues to gain in popularity, but its viewing base is being limited by not having access to more casual sports viewers; that is, those interested in key marquee events. [[BEGIN CONFIDENTIAL]]

[[END

CONFIDENTIAL]]

69. Other carriage agreement terms and conditions further inhibit beIN growth. [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

70. [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]] We understand that the prevalence of MFN clauses in pay TV program distribution contracts has raised concerns of anti-competitive conduct, which is inhibiting the growth of new online video distributors.<sup>67</sup>

**B. BEIN HAS BEEN HURT IN ITS ABILITY TO COMPETE FOR ADVERTISERS**

71. It is well known that audience size and composition drive television advertisement spending, with the size of an audience driving advertising revenue. beIN representatives have represented that in order to enter [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]] As discussed in earlier sections, despite the current constraints on its distribution, beIN has achieved good ratings among the [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]] viewers to whom it has access. The beIN networks are prevented from growing and ratings are kept artificially low, however, as a result of their position in Comcast's cable television packages, which has impaired beIN's standing with advertisers.

72. In contrast, NBCSN and Universo are offered in a more visible package, which provides them with coverage that facilitates high ratings. The end result is that NBCSN and Universo have achieved a critical mass of viewers, which is highly attractive to advertisers. It is

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<sup>67</sup> See the letter sent by the Committee on Homeland Security and Governmental Affairs to Mr. Ajit Pai, Chairman of the FCC on February 6, 2017.

precisely this advantageous positioning that Comcast has an interest in protecting since the availability of alternative good quality sports content would detract from its viewership and ratings.

73. As referenced earlier, the beIN networks and NBCSN/Universe are in competition for the same advertising dollars. Attachments A1 and A2 highlight the substantial overlap in the brands that advertise on these competing networks. As shown in the attachments, in Q4 2017, [[BEGIN CONFIDENTIAL]]

[[END

CONFIDENTIAL]]

74. Attachment B shows that the beIN and NBCSN networks attract viewers with very similar demographic profiles. beIN and NBCSN have similar audiences [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

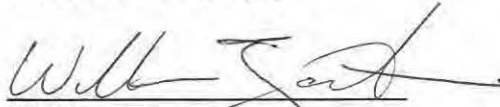
75. The advertising and audience data, as well as NBC's own marketing strategy, present a compelling picture of networks with similar audiences and similar content competing for the same advertising dollars. The primary difference is that NBCSN and Universe are placed in preferential cable TV packages by Comcast, while the beIN networks are relegated to less advantageous packages.


**REDACTED—FOR PUBLIC INSPECTION**

\* \* \* \*

The foregoing declaration has been prepared using facts of which I have personal knowledge or based upon information provided to me. I declare under penalty of perjury that the foregoing is true and correct to the best of my current information, knowledge and belief.

Executed on June 1, 2018

  
William Zarakas  
Principal  
Brattle Group

  
Eliana Garcés  
Principal  
Brattle Group

**REDACTED—FOR PUBLIC INSPECTION**

# **ATTACHMENT A1**

**REDACTED—FOR PUBLIC INSPECTION**

**CONFIDENTIAL DOCUMENT  
WITHHELD IN ITS ENTIRETY**

**REDACTED—FOR PUBLIC INSPECTION**

# **ATTACHMENT A2**

**REDACTED—FOR PUBLIC INSPECTION**

**CONFIDENTIAL DOCUMENT  
WITHHELD IN ITS ENTIRETY**



**REDACTED—FOR PUBLIC INSPECTION**

# **ATTACHMENT B**

**REDACTED—FOR PUBLIC INSPECTION**

**CONFIDENTIAL DOCUMENT  
WITHHELD IN ITS ENTIRETY**

**REDACTED—FOR PUBLIC INSPECTION**

# **ATTACHMENT C**

# REDACTED—FOR PUBLIC INSPECTION

## MVPD Distribution Data

Distributor / Package	Type	Penetration	Subscribers	beIN Sports	beIN Sports Español
<b>AT&amp;T</b>					
U-Basic	General	13%	513,866		
U-Family	General	25%	956,250		
U200	General	15%	573,750		
U300	General	20%	765,000		
U450	General	19%	726,750	✓	✓
U200 Latino	Add-On	3%	114,750	✓	✓
U300 Latino	Add-On	5%	191,250	✓	✓
Sports Pack*	Add-On	0%	-	✓	✓
<b>DirectTV</b>					
Select	General	15%	3,202,050		
Entertainment	General	10%	2,134,700		
Choice	General	11%	2,348,170		
XTRA	General	9%	1,921,230		
Ultimate	General	6%	1,280,820		
Premier	General	27%	5,763,690	✓	
Optimo Mas	Add-On	3%	640,410	✓	✓
Mas Ultra	Add-On	8%	1,707,760	✓	✓
Lo Maximo	Add-On	1%	213,470	✓	✓
<b>Comcast Offer</b>					
Limited Basic	General	10%	2,061,612		
Economy	General	8%	1,737,099		
Starter	General	15%	3,136,959		
Preferred	General	39%	8,220,996		
Preferred Plus	General	0%	-		
Premier	General	26%	5,417,034		
Basic Latino (TV 150 Latino)	Add-On	1%	171,801	✓	✓
Economy Latino (TV 200 Latino)	Add-On	0%	97,566	✓	✓
Economy Plus Latino (TV 300 Latino)	Add-On	1%	139,986	✓	✓
(Starter Latino (TV 450 Latino)	Add-On	1%	226,947	✓	✓
Sports & Entertainment Package	Add-On	23%	4,878,300	✓	✓
<b>Charter</b>					
Basic	General	28%	4,417,067		
Select	General	29%	4,574,820		
Silver	General	31%	4,890,324		
Gold	General	12%	1,893,029	✓	✓
Mi Plan Latino	Add-On	3%	473,257	✓	✓
<b>Dish</b>					
Flex Pack	General	7%	933,240		
America Top 120	General	30%	3,999,600		
America Top 200	General	19%	2,533,080		
America Top 250	General	17%	2,266,440	✓	✓
America's Everything Pack	General	4%	533,280	✓	✓
DishLatino Basic	Add-On	1%	133,320	✓	✓
DishLatino Clasico	Add-On	1%	133,320	✓	✓
DishLatino Plus	Add-On	2%	266,640	✓	✓
DishLatino Dos	Add-On	0%	33,330	✓	✓
DishLatino Max	Add-On	2%	266,640	✓	✓
World Sports	Add-On	0%	-	✓	✓
<b>Cablevision-Altice</b>					
Broadcast Basic	General	6%	145,235		
Optimum Value	General	7%	169,441		
Optimum Preferred	General	12%	290,471		
Optimum Silver	General	15%	363,089		
Optimum Gold	General	20%	484,118	✓	✓
Optimum Core	General	22%	532,530		
Optimum Select	General	10%	242,059		
Optimum Premier	General	8%	193,647	✓	✓
Optimum en Esp	Add-On	0%	-	✓	✓

# REDACTED—FOR PUBLIC INSPECTION

Distributor / Package	Type	Penetration	Subscribers	beIN Sports	beIN Sports Español
<b>Cox</b>					
TV Starter	General	28%	945,253		
Contour TV	General	15%	524,238		
Contour TV Flex	General	38%	1,285,381		
Contour TV Ultimate	General	19%	631,861	✓	✓
Sports & Information Package	Add-On	11%	379,726	✓	✓
Sports Pak 2	Add-On	7%	227,429	✓	✓
Latino Pak	Add-On	2%	67,687	✓	✓
<b>Verizon</b>					
FiOS TV Local	General	18%	751,712		
Preferred HD	General	32%	1,336,378	✓	
Extreme HD	General	14%	584,665	✓	✓
Ultimate HD	General	22%	918,760	✓	✓
Fios TV Mundo	Add-On	3%	125,285	✓	✓
<b>Mediacom</b>					
Local Plus	General	49%	351,029		
Family TV	General	51%	365,356		
Sports & Information	Add-On	12%	85,966	✓	✓
Canales Latinos	Add-On	6%	42,983	✓	✓

Source: Data provided by beIN.

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# **EXHIBIT 2**

**REDACTED—FOR PUBLIC INSPECTION**

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
<b>beIN Sports, LLC,</b>	)	MB Docket No. 18-90
Complainant,	)	File No. CSR-8954-P
	)	
v.	)	
	)	
<b>COMCAST CABLE COMMUNICATIONS,</b>	)	
<b>LLC,</b>	)	
And	)	
<b>COMCAST CORPORATION,</b>	)	
Defendants.	)	
	)	
	)	
TO: Chief, Media Bureau	)	

**REPLY DECLARATION OF ANTONIO BRICEÑO**

**REDACTED—FOR PUBLIC INSPECTION**

I, Antonio Briceño, being over 18 years of age, swear and affirm as follows:

1. I make this declaration using facts of which I have personal knowledge or based on information provided to me, in connection with the program carriage complaint of beIN Sports, LLC (“beIN”) against Comcast Cable Communications, LCC (“Comcast”) and the effects of Comcast’s program carriage offer on beIN.

2. I filed an initial declaration in this matter on March 15, 2018. My qualifications are attached to that declaration.

3. I prepared and delivered beIN’s offers to Comcast and participated in, or supported, negotiations between beIN and Comcast.

4. ***beIN’s programming is the same genre as NBC Sports and Universo.*** I have extensive experience in the video programming industry. It is obvious to me that the programming of the beIN networks is in the same genre as NBC Sports and Universo. All of beIN, beIN en Español, NBC Sports and Universo promote sports, and particularly soccer, as marquee programming to viewers and advertisers alike. The soccer brand projected by NBC Sports and Universo has only become more pronounced over the last few years.

5. ***Comcast is wrong that the treatment of beIN by other MVPDs is indistinguishable from the treatment of beIN by Comcast.*** Two major MVPDs, Verizon and Charter, place beIN in more widely distributed packages, and one OVD places beIN in its most widely distributed package bar none. Moreover, [[BEGIN CONFIDENTIAL]]

[[END

CONFIDENTIAL]]. Finally, many distributors treat beIN differently in terms of the genre of package to which beIN is assigned. In contrast with Comcast, AT&T, DirecTV, Charter, DISH,



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Altice, Cox, and Verizon all carry beIN and beIN en Español on general entertainment tiers, often in addition to their carriage on specialty tiers.

6. It is also important to understand that beIN's current carriage and penetration are a function of the initial distribution deals that beIN was able to negotiate as a fledgling network.

[[BEGIN CONFIDENTIAL]]

[[END

CONFIDENTIAL]] Since those deals were struck, beIN has enjoyed substantial growth as a brand and with its viewers. But for Comcast's discriminatory behavior, beIN has every expectation that it will be successful in increasing its carriage with MVPDs as it negotiates follow-on carriage agreements.

7. *beIN competes with NBC for both large and small advertisers.* Many large shared advertisers, dismissed by Comcast as too large to matter, have advertising programs tailored to a few networks, including the beIN networks and NBC Sports and Universo, or limited to beIN and NBC Sports. [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

8. In fact, contrary to Comcast's claim, there are not [[BEGIN CONFIDENTIAL]]  
[[END CONFIDENTIAL]], but literally [[BEGIN CONFIDENTIAL]] [[END  
CONFIDENTIAL]] advertisers buying airtime on both the beIN and the NBC networks, as shown in Attachment A to this declaration. The list, produced by Nielsen and tracking 2017 Q4 advertising for all networks, includes many small advertisers who do not fit at all the

characteristics castigated by Comcast, and for whom the platforms of the NBC and beIN networks are uniquely suitable as well as substitutable for another: [[BEGIN  
CONFIDENTIAL]]

[[END  
CONFIDENTIAL]].

9. *beIN competes for the same audience as NBC Sports and Universo.* There is substantial audience overlap between the beIN networks and NBC Sports and Universo. Comcast seems to admit to at least 30 percent of an overlap when it pulls a promotional statement from beIN’s website as supposed evidence of its claim: “70% of [Spanish soccer league] La Liga viewers on beIN’s English-language channel do not watch [English] Premier League on NBC Sports Network.”<sup>1</sup> To begin with, that statement speaks volumes by itself: the reason why we emphasized that fact on our website is because we compete with, and sell against, NBC Sports, especially in the fight for advertisers. Moreover, the flip side of this statement is that 30% of La Liga viewers also watch the English Premier League. In fact, as Attachment B illustrates, the 30% of the beIN viewers who watched English Premier League games on NBC Sports in 2017 has increased to 50% for the year to date in 2018.

10. The cross-border emphasis makes sense in light of the player-specific nature of much of soccer fandom and the mobility of players. For example, in 2014, the Uruguayan player Luis Suarez left the EPL team Liverpool for La Liga team Barcelona.<sup>2</sup> In 2017, the Spanish

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<sup>1</sup> Answer at 3.

<sup>2</sup> See *Liverpool & Barcelona Agree £75m Deal for Striker*, BBC Sports (July 11, 2014), <https://www.bbc.com/sport/football/28180600>.

player Alvaro Morata made the reverse move, from Real Madrid to Chelsea.<sup>3</sup> Enthusiastic fans of these players are likely to follow them to the new league; as for the old team's games, they may or may not continue to watch them, depending on convenience and cost, among other factors.

11. ***There is substantial viewer overlap between the NBC and beIN networks.***

Comcast tries to obfuscate this viewer overlap by citing a useless set of numbers: the percentage of *NBC viewers* who also watch beIN. Since beIN is available to only approximately [[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]] million households in the United States, while NBC Sports is available to almost [[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]] million, it is misleading to claim that “only” [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]] of NBC Sports viewers also view beIN. It is more appropriate to look only at households where both networks are available. In turn, this means that the relevant measure is the percentage of beIN households that also watch the NBC networks' programming, since almost all households reached by the beIN networks are also reached by the NBC networks. In fact, were Comcast to do this, it would find the overlap to be substantial. Based on Nielsen data for 2017, more than [[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]] of beIN-viewing households also watched NBC Sports. And the trend is upwards. For the period between April 2017 and April 2018, the number is [[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]]. The data are similar between beIN en Español and Universo. For the same periods, more than [[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]] and [[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]] of beIN en Español viewing

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<sup>3</sup> See Stephen Turner, *Alvaro Morata Signs for Chelsea from Real Madrid on Five-Year Contract*, Sky Sports (July 22, 2017), <http://www.skysports.com/football/news/11668/10956798/alvaro-morata-signs-for-chelsea-from-real-madrid-on-five-year-contract>.

households also watched Universo. The overlap between the networks' viewers is illustrated in Attachment C.

12. *The demographics of the beIN networks and NBC Sports and Universo are substantially similar.* The viewers of both beIN and NBC Sports skew strongly male [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]], and have very similar median incomes of [[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]]—hardly the rich/poor picture painted by Comcast.

13. As for Universo, Comcast states that more than 75% of Universo households have an income below \$75,000<sup>4</sup>; [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]<sup>5</sup> Rather remarkably, the median viewer age of both networks' viewers is exactly the same—[[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]] years old—so much for age difference. And viewers of both networks are more likely to [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]].

14. *beIN's ratings are comparable to NBC Sports and Universo.* Using national ratings to compare the quality of two differently distributed networks is not industry standard. Other MVPDs want to know how beIN and beIN en Español compare to NBC Sports and Universo when such networks compete for the same viewer. Coverage area ratings supply this head-to-head analysis. National ratings do not.

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<sup>4</sup> Answer ¶ 35.

<sup>5</sup> See Exhibit 1.

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15. In an attempt to undermine beIN's use of coverage area ratings, Comcast argues that "specialty sports and Spanish language packages . . . have disproportionately large number of sports fans and Latinos that are more likely to watch the beIN networks than would the overall population, so it is unsurprising that beIN's coverage area ratings are higher."<sup>6</sup>

16. While there may be some specialty package viewers who purchase the sports tier package, in whole or in part, to watch soccer, there are many who do not. The same is true for Spanish language packages. Instead of acknowledging this, Comcast appears to be implying once again that the appeal of beIN's content is deep (having a passionate following within the scope of its appeal) but regrettably narrow (appealing to a small audience). This is seldom the case in the programming industry. Content able to generate passionate viewership much more often than not translates into broader appeal when given the opportunity. Given the exploding interest in soccer by American viewers, my experience tells me that moving beIN to a higher-penetrated tier would lead to many more households subscribing or not leaving Comcast. I explain this in greater detail below.

17. In any event, Comcast's conjecture that beIN's coverage ratings are meaningless because of its narrow distribution is wrong. This can be shown by our ratings over time in the Dallas market, where we were given broader distribution by Charter's predecessor Time Warner in 2014. beIN's unadjusted ratings grew significantly upon the broadening of its distribution base and continued to grow at a pace that was more than six fold between June 2014 and June 2015. Thus, [[BEGIN CONFIDENTIAL]]

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<sup>6</sup> Answer ¶ 41.

[[END CONFIDENTIAL]].

18. *Comcast's offer would discriminate against beIN.* Comcast's December 2017 offer would reduce viewership on Comcast's system from [[BEGIN CONFIDENTIAL]]

[[END

CONFIDENTIAL]] the penetration reduction would be even greater if the subscriber base for the Sports & Entertainment package dwindles.

19. [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

20. There is similarly no plausible motive behind Comcast's [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]] other than a desire to discriminate in favor of NBC.

21. *beIN's broader distribution would benefit Comcast.* The idea that Comcast made the December 13, 2017 offer because broader distribution of beIN's network would not yield a "net benefit" for Comcast or would lose Comcast money cannot survive a simple fact—the [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]], broader distribution would be all upside and no downside for Comcast.

22. This is true despite the possibility of a shrinking customer base. [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]].<sup>7</sup> Comcast would have to suffer a mass exodus of about [[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]] million subscribers in its Digital Starter base before a move of beIN to that package becomes disadvantageous. Nor does it appear that Comcast has supplied any evidence that the subscriber base for its broad distribution packages is likely to decline at a faster rate than for the Sports and Entertainment package. In any event, Comcast's subscriber base has remained relatively flat in

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<sup>7</sup> See SNL Kagan, Comcast Packages 4Q 2017 (last accessed May 30, 2018).

recent years. And Comcast is protected from the prospect of a declining subscriber base by the  
[[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]] proposed by beIN.

23. In addition, a move of beIN from the Sports Entertainment package to the  
[[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]] tier, and a move of  
beIN en Español to the [[BEGIN CONFIDENTIAL]] [[END  
CONFIDENTIAL]] tiers, would result in many existing Comcast subscribers retaining these  
packages, and many viewers subscribing to them. The reasons are at least two: first, the beIN  
networks have shown their mettle by achieving comparable ratings to those of the NBC networks  
on a coverage area basis. These ratings are not diluted with broader distribution, as I have  
discussed above by pointing to our experience in Dallas. Translating these ratings on the larger  
canvas of a broader package would mean that many additional viewers would be attracted to the  
package and many existing subscribers would be deterred from leaving.

24. Second, Comcast would have a price advantage over competitors, particularly  
Verizon in key markets such as New York, Boston and Philadelphia. For example, in areas  
where FiOS provides beIN in its Preferred HD package for \$74.99, Comcast's Digital Starter  
package, now priced as low as \$49.99, would be an attractive proposition.

25. These gains would not be offset by significant losses of subscribers to the  
Comcast specialty packages. Comcast itself appears to admit that these losses would be small.<sup>8</sup>

26. For similar reasons, Comcast is wrong when it argues that, if passionate beIN fans  
have already left Comcast's Sports Entertainment package to get beIN more cheaply elsewhere,  
the carriage of beIN on Comcast's [[BEGIN CONFIDENTIAL]] [[END  
CONFIDENTIAL]] would be of no benefit to Comcast. The benefit to Comcast exists and is

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<sup>8</sup> Brayford Decl. ¶ 21.



concrete: if Comcast includes beIN at the [[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]] package, beIN fans who left because the cheapest way of receiving both beIN networks on Comcast was by paying \$59.98 a month, would now be able to receive beIN on the [[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]].

27. ***Comcast's offer unreasonably restrains beIN's ability to compete.*** The December 13, 2017 offer would unreasonably restrain, and has already restrained, beIN's ability to compete. Among other things, the lack of broader distribution, lack of authentication to beIN's online product, and even lack of HD carriage—the minimum expected quality for sports events today—will hamper, and is today hampering, [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]].

28. The combination of low (and lowered) distribution, SD transmission (with limited exceptions) and no authentication options is business-destroying for us. It hampers significantly our ability to attract viewers, including the occasional viewers who are tempted to try watching soccer and other sports but are not committed enough to sports today to subscribe to the Sports Entertainment package. This very important segment of viewers would be dominated by NBC Sports on Comcast's platform. We are also hampered in our ability to obtain improvements in our position from other distributors, who all look to Comcast as a trend-setter. What is more, lack of an HD signal and authentication affects the ability of our existing viewers to enjoy our content fully. HD content is now expected for sports programming. In fact, the increasing

popularity of 4K TVs has made HD streams not only preferable but necessary, as 4K resolution has made the disparities between HD and SD all the more apparent.<sup>9</sup> Similarly, authentication allows viewers to watch their preferred content as it happens wherever they may be, a feature particularly important for live sports programming.<sup>10</sup>

29. And of course, we will be dealt a crucial blow in our ability to sell airtime to advertisers. Relegation to specialty tiers has a direct and manifest effect on our ability to attract and retain advertising dollars. As I have testified, a number of advertisers shift their dollars between the beIN and NBC networks, and many of the more than [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]] advertisers that we share have needs for which the beIN networks and NBC Sports and Universo are particularly or indeed uniquely suitable. We fight with NBC for advertising dollars every day. The narrower distribution, worse transmission quality and lack of authentication are significant handicaps in that fight. In fact, the diminution of distribution on Comcast would make it difficult or impossible for us to attain the 40 million mark that is considered an important milestone in the industry.

30. Comcast's offer would also affect our ability to purchase additional soccer rights, as such agreements are often subject to minimum penetration requirements.

31. *beIN's ability to compete is being restrained already today.* [[BEGIN CONFIDENTIAL]]

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<sup>9</sup> Geoffrey Morrison, *Can 4K TVs Make 'Regular' HD Content Look Better?*, CNET (June 2, 2015), <https://www.cnet.com/news/can-4k-tvs-make-1080p-look-better/> ("And it's worth remembering that the more you sharpen an image, the more you accentuate the flaws present in lower-grade content, such as noise or macroblocking.").

<sup>10</sup> Josh Decker, *3 Trends Changing the Fan Experience and the Future of Live Sports*, (Sept. 6, 2017), [https://www.huffingtonpost.com/entry/3-trends-changing-the-fan-experience-and-the-future\\_us\\_59b01fcfe4b0bef3378cdce7](https://www.huffingtonpost.com/entry/3-trends-changing-the-fan-experience-and-the-future_us_59b01fcfe4b0bef3378cdce7) ("With Amazon Prime, Facebook, Hulu and Twitter now featuring live sports, fans today are more likely than ever to live stream or watch games on-demand, which in turn is disrupting traditional broadcast networks.").

**REDACTED—FOR PUBLIC INSPECTION**

[[END CONFIDENTIAL]].

**REDACTED—FOR PUBLIC INSPECTION**

\* \* \* \*

The foregoing declaration has been prepared using facts of which I have personal knowledge or based upon information provided to me. I declare under penalty of perjury that the foregoing is true and correct to the best of my current information, knowledge and belief.

Executed on June 1, 2018

A handwritten signature in black ink, appearing to read 'Antonio Briceño', written over a horizontal line.

---

Antonio Briceño  
Deputy Managing Director,  
US & Canada  
beIN Sports, LLC

**REDACTED—FOR PUBLIC INSPECTION**

# **ATTACHMENT A**

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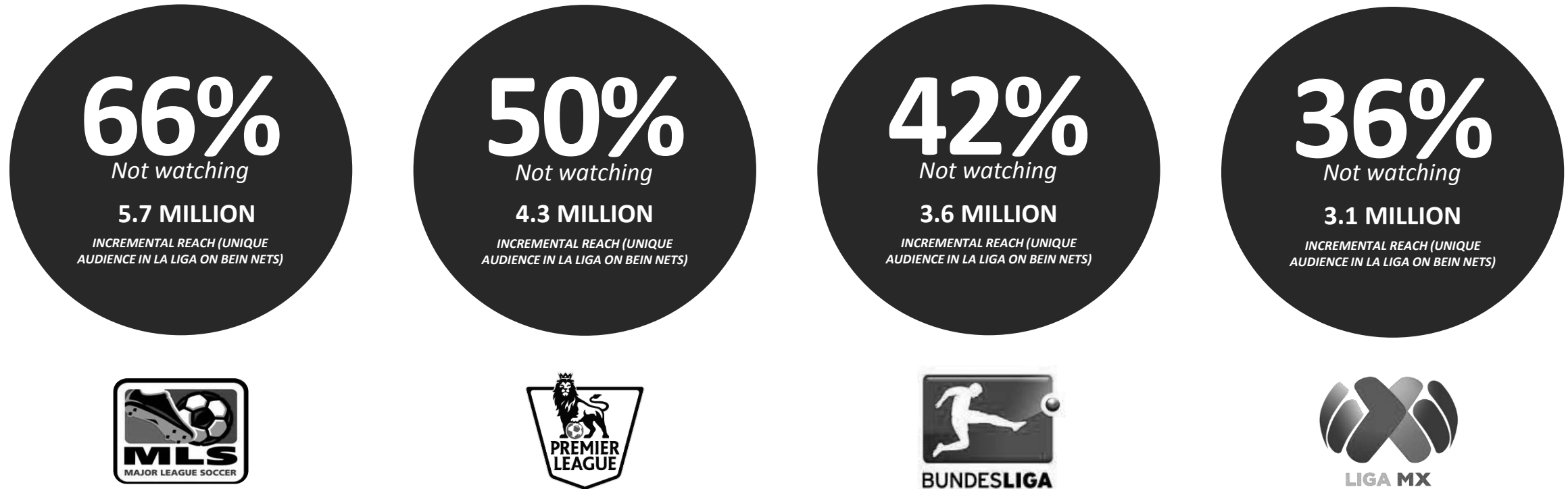
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# **ATTACHMENT B**

# UNIQUE, INCREMENTAL AUDIENCE WITH OTHER SOCCER PROPERTIES

LA LIGA VIEWERS ON beIN SPORTS NETS INCREMENTAL REACH VS. OTHER SPORTS PROPERTIES



SOURCE: Nielsen NPower, L+SD, R&F Report, 12/26/16-12/31/17, P2+ (000); among ad supported cable networks; La Liga & La Liga Marquee Live program schedule against MLS (on ESPN, ESPN 2, FS1, FOX Deportes and Univision Deportes), Premier League (on Bravo, CNBC, E!, Esquire, MSNBC, NBC Sports, Universo, Oxygen, SYFY and USA), Bundesliga (on FS1, FS2 and FOX Deportes) and Liga Mexicana (on FOX Deportes, FS2, Galavision and Univision Deportes).



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# **ATTACHMENT C**

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# **EXHIBIT 3**

**REDACTED—FOR PUBLIC INSPECTION**

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
<b>beIN Sports, LLC,</b>	)	MB Docket No. 18-90
Complainant,	)	File No. CSR-8954-P
	)	
v.	)	
	)	
<b>COMCAST CABLE COMMUNICATIONS,</b>	)	
<b>LLC,</b>	)	
And	)	
<b>COMCAST CORPORATION,</b>	)	
Defendants.	)	
	)	
	)	
TO: Chief, Media Bureau	)	

**DECLARATION OF KEN TOLLE**

**REDACTED—FOR PUBLIC INSPECTION**

I, Ken Tolle, being over 18 years of age, swear and affirm as follows:

1. I make this declaration using facts of which I have personal knowledge or based on information provided to me, in connection with the program carriage complaint and reply of beIN Sports, LLC (“beIN”) against Comcast Cable Communications, LCC (“Comcast”) and the effects of Comcast’s program carriage offer on beIN.

2. I am currently the President and Senior Advisor of Launch Pad Media Advisors, PC. In that capacity, I advise buyers and sellers on major network acquisitions and negotiate programming network deals. I have served in that capacity since June of 2007. Before that, I was vice president of programming at DISH Network, a distributor competing with Comcast, from 2002 to 2007. I received my J.D. from University of Denver, Sturm College of Law in 1999 and my MBA from University of Denver, Daniels College of Business in 2007. I am admitted to practice in the State of Colorado. I have over 18 years of experience in video content licensing, sophisticated corporate transactions and business development.

3. I have advised beIN in content acquisition and distribution matters since April of 2012. In my role with beIN, I have been directly and personally involved in the negotiations with Comcast since the initial discussions concerning launch of the network. I helped negotiate the original agreement between beIN and Comcast in 2012, and I have been directly and personally involved in the discussions with Comcast for renewal of carriage rights.

**Comcast misrepresents the beIN-Comcast negotiations**

4. Comcast attempts to misdirect the Commission by focusing on beIN’s offer and not its own discriminatory conduct. Below I offer my own, first-hand perspective of what has transpired during the beIN-Comcast negotiations.

5. [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]] As for beIN, due to confidentiality concerns, we were limited in the contractual assurances we could make. Nevertheless, we were always clear that in any new agreement, beIN would continue to over-deliver based on the guarantees in the original agreement and that Comcast would have remedies for loss of product if we did not deliver.

6. Contrary to Comcast's insinuation that it has an open mind on distribution of beIN, Comcast [[BEGIN CONFIDENTIAL]]

[[END  
CONFIDENTIAL]]

7. Comcast states that beIN failed to address [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

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<sup>1</sup> Answer ¶ 9.

<sup>2</sup> Brayford Decl. ¶ 35.

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8. Contrary to Comcast's statements,<sup>3</sup> [[BEGIN CONFIDENTIAL]]

[[END

CONFIDENTIAL]]

9. [[BEGIN CONFIDENTIAL]]

[[END

CONFIDENTIAL]]

10. Comcast states that [[BEGIN CONFIDENTIAL]]

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<sup>3</sup> Answer ¶ 37.

<sup>4</sup> *Id.* ¶ 17.

<sup>5</sup> *Id.* ¶ 18.

[[END CONFIDENTIAL]]. To hear that Comcast is not interested in providing more high quality content to its subscribers, at no incremental cost, was surprising and is not the same reaction we have received from other distributors.

11. Comcast states that I said “it could take weeks to work through these issues” in the March 12, 2018 phone call.<sup>6</sup> [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

12. On authentication, Comcast is not correct when it states that negotiations for authentication began in 2016.<sup>7</sup> In fact, beIN has been asking for Comcast to authenticate subscribers since it launched beIN Connect (originally beIN Play) in early 2013. [[BEGIN CONFIDENTIAL]]

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<sup>6</sup> Answer ¶ 19.

<sup>7</sup> Brayford Decl. ¶ 3.



[[END CONFIDENTIAL]] In so doing, Comcast deprives its customers of high-quality content, harms beIN's ability to serve the audience and inhibits the development of the market for online video distribution.

**beIN distribution**

13. Comcast alleges that beIN is overstating its carriage by certain MVPDs.<sup>8</sup>

[[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

**Comcast has restrained beIN's ability to compete and confirmed its intention to continue to do so through its offer**

14. *Comcast uses must-have programming to obtain better distribution for its networks.* Comcast has must-have programming, such as its NBC network, the Olympics (which

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<sup>8</sup> Answer ¶ 52 & n.112.

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NBC offers over multiple NBC network properties), and the USA network.<sup>9</sup> For other MVPDs, even large ones, to obtain access to this programming, they must acquiesce to carrying the rest of NBC's programming. This is a widespread phenomenon in the programming market, where just a handful of the largest programmers, including NBC, are able to force MVPDs to accept as many as 65 channels to acquire distribution rights to just a few must-have channels or programs.

15. It is by wielding this power that NBC has achieved broad distribution not only for NBC Sports and Universo but also for such undeniably specialty content such as the SyFy channel.

16. Indeed, Comcast has admitted this candidly during its negotiations with beIN.  
[[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

17. *Comcast gave the impression that its offer was "take-it-or-leave-it."* Comcast's behavior has not instilled in beIN much faith in the value, or even the sense, of waiting. First of all, Comcast did not respond to our April 2017 offer for eight months, making the hope for a subsequent, better offer dim. Second, when it did respond, Comcast let us assume that Comcast's offer was take-it or leave it. [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]] We practically begged

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<sup>9</sup> See *Businesses*, NBC Universal, <http://www.nbcuniversal.com/who-we-are> (last visited May 19, 2018).

**REDACTED—FOR PUBLIC INSPECTION**

Comcast for any counter that would allow us to avoid litigation and were left wondering if we would ever receive a counteroffer.

18. I believe that the December 13, 2017 offer was likely timed to ensure that beIN would have limited, if any, capacity to seek legal redress through FCC proceedings ahead of the renewal deadline.

19. [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

20. Comcast also claims incorrectly that the [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]] More important, the price proposal by beIN is at or below the ratings-adjusted prices of comparable networks, as shown in the below chart, which beIN presented to Comcast at the time. [[BEGIN CONFIDENTIAL]]

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<sup>10</sup> Briceño Reply Decl. ¶ 19.

<sup>11</sup> Answer ¶ 60.

[[END CONFIDENTIAL]]

21. [[BEGIN CONFIDENTIAL]]

[[END

CONFIDENTIAL]]

22. [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

23. [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]] Any less distribution relegates beIN to disproportionately less advertising revenue.<sup>12</sup> beIN has achieved with several other distributors penetration levels that are sufficient building blocks to reaching this threshold and sought to replicate that distribution with the Comcast renewal. Comcast's offer takes beIN backwards in terms of distribution—offering it access to many fewer households. The Comcast offer would [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

24. [[BEGIN CONFIDENTIAL]]

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<sup>12</sup> Briceño Reply Decl. ¶ 29.

**REDACTED—FOR PUBLIC INSPECTION**

[[END CONFIDENTIAL]]

**REDACTED—FOR PUBLIC INSPECTION**

\* \* \* \*

The foregoing declaration has been prepared using facts of which I have personal knowledge or based upon information provided to me. I declare under penalty of perjury that the foregoing is true and correct to the best of my current information, knowledge and belief.

Executed on June 1, 2018

*Kenneth B. Tolle*

Ken Tolle  
President and Senior Advisor  
Launch Pad Media Advisors, PC

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# **ATTACHMENT A**



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# **EXHIBIT 4**

**REDACTED—FOR PUBLIC INSPECTION**

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
<b>beIN Sports, LLC,</b>	)	MB Docket No. 18-90
Complainant,	)	File No. CSR-8954-P
	)	
v.	)	
	)	
<b>COMCAST CABLE COMMUNICATIONS,</b>	)	
<b>LLC,</b>	)	
And	)	
<b>COMCAST CORPORATION,</b>	)	
Defendants.	)	
	)	
	)	
TO: Chief, Media Bureau	)	

**REPLY DECLARATION OF ERIC SAHL**

**REDACTED—FOR PUBLIC INSPECTION**

I, Eric Sahl, being over 18 years of age, swear and affirm as follows:

1. I filed an initial declaration in this matter on March 15, 2018. My qualifications are attached to that declaration. In sum, I have devoted more than 16 years to negotiating programming agreements on both sides of the distributor/programmer divide, and advising on program carriage in the television industry.

2. I have been asked by beIN to offer my expert view on: (1) whether beIN and beIN en Español and their programming are similarly situated to NBC Sports and Universo and their programming; (2) whether the offer that Comcast made beIN on December 13, 2017, which among other things places beIN en Español in a lower penetration package (the Latino package) than the tiers featuring NBC Sports and Universo, would unreasonably restrain beIN's ability to compete fairly; (3) whether Comcast's December 13, 2017 offer to beIN appears based on commercial considerations or whether it appears based on Comcast's interest in favoring its own affiliated programming; and (4) to assess Comcast's answers on these matters.

3. I reviewed Comcast's Answer in this proceeding, along with associated exhibits and Declarations submitted with the Answer, including Declarations by Messrs. Brayford, Smith and Litman and Dr. Lerner.

4. Comcast's answer does not alter my conclusions that: (1) beIN and beIN en Español and their programming are similarly situated to NBC Sports and Universo and their programming; (2) the discriminatory treatment of beIN's networks reflected in Comcast's December 13, 2017 offer would unreasonably restrain beIN's ability to compete fairly; and (3) Comcast's offer seems motivated by favoritism for its affiliated programming as opposed to commercial considerations as to how to best serve consumers.

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5. This reply declaration will be focused on some of the many similarities between the programming offered by beIN and beIN en Español, on the one hand, and NBC Sports and Universo, on the other, including substitutability and the similar demographic characteristics of these networks' audiences. I also discuss the relevance of the [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]] metric to this comparison.

6. ***Different soccer leagues are all soccer.*** Soccer fans are soccer fans. Viewers with a team favorite will frequently watch a match that does not feature their team or league when their favorite is unavailable. This is common in sports. The World Series does not garner the viewership it does with fans only from the competing teams' home towns. And fans of professional baseball will often watch college baseball and even the little league World Series. With soccer, this is even more true, because soccer is a global sport with multiple highly competitive and compelling leagues and international matchups.

7. Additionally, soccer players are highly mobile, moving from one league to another league multiple times in their careers. For instance, in 2014, Luis Suarez, a famous Uruguayan player, left Liverpool, a team in the English Premier League, to join Barcelona, a team in the Spanish La Liga. That same year, the popular Spanish player Ander Herrera made the reverse move from Athletic Bilbao, a team in La Liga, to Manchester United, a team in the English Premier League. Similarly, in 2017, Alvaro Morata, also a popular Spanish player on Real Madrid, a team in La Liga, joined Chelsea in the English Premier League. And in 2018, the Brazilian player Philippe Coutinho moved from Liverpool in the English Premier League to Barcelona in La Liga.

8. This is also true for national fans, for whom their compatriot players are heroes regardless of team. For instance, it is well-known that Argentines are passionate fans of Lionel

Messi and will watch any game in which he plays. Meanwhile, Brazilians are passionate fans of Neymar and followed him after his move from La Liga to Ligue 1. The mobility of players also means that a fan of a particular player may end up following multiple teams. For instance, a fan of Suarez who watched Liverpool will start watching Barcelona, but may continue watching Liverpool. Likewise, a fan of Alvaro Morata may end up watching both Real Madrid and Chelsea games. Enthusiastic fans of these players are likely to follow them to the new league; as for the old team's games, they may or may not continue to watch them, depending on convenience and cost, among other factors. No wonder, then, that NBC Sports emphasizes cross-border all-things soccer.

9. The soccer brand projected by NBC Sports has only become more pronounced with time. In November 2017, for example, NBC Sports organized a “special fan festival” in Manhattan for English Premier League fans that included Chelsea personalities.<sup>1</sup>

10. ***The beIN and NBC networks attract similar demographics.*** My analysis of the Nielsen demographic data provided to me by beIN for both the beIN networks and NBC Sports and Universo confirms the similarity between the networks' audiences. The viewers of both beIN and NBC Sports skew strongly male [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]] are the single largest demographic for both networks, and the viewers of the two networks have very similar median incomes of [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]. This is the common profile of a sports audience: young, male, and financially secure.

---

<sup>1</sup> Brattle Report ¶ 19.

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11. The same is true for the audiences that watch beIN en Español and Universo. The median age for the two networks is the same—[[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]] years old. Median incomes, too, between the networks are similar. More than [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]].<sup>4</sup>

12. Comcast invokes a promotional statement from beIN’s website: “70% of [Spanish soccer league] La Liga viewers on beIN’s English-language channel do not watch [English] Premier League on NBC Sports Network.”<sup>5</sup> But this is not a claim that the two programs attract different demographics. It is merely the truism that different soccer fans will often watch different soccer games. That is not surprising.

13. Moreover, what is more telling than the practice of the 70% La Liga viewers is its flipside—the practice of the remaining 30% of these viewers. Evidently, they also watch English Premier League on NBC Sports. This is consistent with my experience with sports networks. This category of viewers likely includes Suarez fans who continue watching Liverpool games even as they followed their idol to Barcelona, and Morata fans who added Chelsea games to the Real Madrid games they used to watch. What is more, 2018 data to date show that this type of cross-viewership is growing, with a full 50% of La Liga viewers watching English Premier

---

<sup>2</sup> Answer ¶ 35.

<sup>3</sup> See Exhibit 1.

<sup>4</sup> See Exhibit 1.

<sup>5</sup> Answer at 3.

League on NBC Sports.<sup>6</sup> This means that one out of every two viewers of a La Liga match also watches an English Premier league match, a very high overlap. The increase in overlap over one year suggests the overlap is trending upward, especially as players continue to move between leagues and their fans follow them to their new teams. With beIN out of the picture, many among the 50% of Spanish La Liga viewers who stay with Comcast will likely start watching English Premier League games; and many among the other 50%, who watch both already, will likely watch more of NBC's English Premier League games. This type of cross-over is a hallmark of similarly situated programming.

14. ***Passion does not signify a niche network.*** Comcast dismisses the [[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]] ratings without providing a sufficient basis for doing so; rather, Comcast's witness Dr. Litman argues that such ratings simply show that soccer programming is [[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]].<sup>7</sup>

15. Comcast's dismissal does not square with marketplace realities. [[BEGIN CONFIDENTIAL]]

---

<sup>6</sup> Briceño Reply Decl. ¶ 9.

<sup>7</sup> Litman Decl. ¶ 13; Answer ¶ 40.

<sup>8</sup> See also Briceño Reply Decl. ¶ 8.



[[END

CONFIDENTIAL]].

16. In addition, Comcast’s attempt to compare [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]].

17. In my experience, unconditional Most Favored Nation (“MFN”) clauses hamper the ability of independent programmers like beIN from achieving wide distribution. Here, the MFN clause in the 2012 agreement between Comcast and beIN requires that [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]], it is a significant constraint on beIN’s negotiations with other distributors. So, for the past six years, beIN has not had the opportunity to offer distributors a number of possible incentives to drive additional distribution, as that would either be taken by Comcast on an “unconditional” basis, or face a contract dispute with Comcast concerning reasonable substitute consideration.

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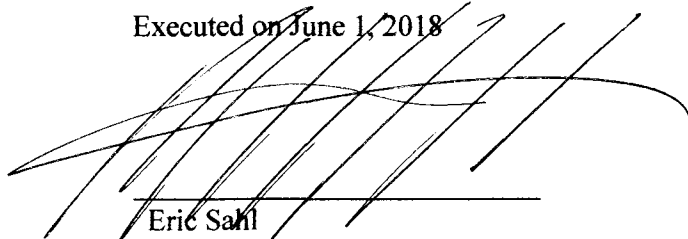
<sup>9</sup> Complaint ¶ 69.

**REDACTED—FOR PUBLIC INSPECTION**

\* \* \* \*

The foregoing declaration has been prepared using facts of which I have personal knowledge or based upon information provided to me. I declare under penalty of perjury that the foregoing is true and correct to the best of my current information, knowledge and belief.

Executed on June 1, 2018

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and diagonal strokes, positioned over the printed name and title.

Eric Sahl  
President  
ID Media LLC

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# **EXHIBIT 5**

# REDACTED—FOR PUBLIC INSPECTION

Screenshots from <https://www.nbcsports.com/soccer> (last visited May 17, 2018)

SELECT DAY

< WED >

SELECT SPORT

NHL

WPG

2

FINAL

4

VSK

STANLEY CUP PLAYOFFS

NBCSN

WATCH NOW

VIEW FULL SCHEDULE

Latest Video

Table

Promoted

That's A Dive

All Access


UPCOMING EVENTS

NBC Sports Gold  
Match of the Week Ep. 38  
Soccer  
10:30am EDT


NBC Sports Gold  
Review of the Season 17-18  
Soccer  
Fri 3:30pm EDT

NBC Sports Gold  
Goals of the Season 17-18  
Soccer  
Sat 7pm EDT


TOP STORIES



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**Atletico Madrid wins Europa League title**



**Roundtable: Premier League season review**

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**NBC Sports** WATCH NFL NHL NBA MLB SOCCER NASCAR HORSES GOLF OLYMPICS MOTORS MORE

18 WAS

**WATCH NOW**  
VIEW FULL SCHEDULE

**UPCOMING EVENTS**

**NBC Sports Gold**  
**Goals of the Season 00-01**  
Soccer  
Tue 10am EDT

**NBC Sports Gold**  
**Goals of the Season 01-02**  
Soccer  
Wed 10am EDT

**NBC Sports Gold**  
**PL Legends: Andy Cole**  
Soccer  
Wed 11am EDT

**NBC Sports Gold**  
**Goals of the Season 02-03**  
Soccer  
Thu 10am EDT

**NBC Sports Gold**

**PRO SOCCER TALK**

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**Emery set to replace Wenger at Arsenal**

Photo by Mark Thompson/Getty Images

By Nicholas Mendola | May 21, 2018, 3:00 PM EDT

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Six Premier Leagueers named to Argentina, but no Icardi  
*21 min ago*

Men in Blazers POD: FA Cup recap, UCL final preview and more  
*37 min ago*

Long-term absentee: Santi Cazorla will leave Arsenal  
*2 hours 36 min ago*

Wolfsburg keeps Bundesliga spot with playoff win  
*3 hours 6 min ago*

Injuries aren't halting Red Bulls from proving to be MLS' top club  
*4 hours 2 min ago*

Nainggolan ends Belgium career after World Cup snub  
*5 hours 37 min ago*

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Screenshots from <https://www.nbcsports.com/soccer> (last visited May 17, 2018)



Screenshots from [http://shop.nbcsports.com/NBC\\_Soccer](http://shop.nbcsports.com/NBC_Soccer) (last visited May 17, 2018)

Sign Up & Save 10% Track Order Help My Account \$0.00

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## Soccer

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Shop, United States jerseys, U.S. Soccer Gear, Soccer Jersey

### MLS KITS & MORE!

SHOP NOW

### WORLD CUP GEAR

SHOP NOW

### U.S. SOCCER GEAR

SHOP NOW

### National Teams

USA	England	Mexico	Japan
Argentina	France	Italy	France
Colombia	Germany	Spain	Russia
Brazil		South Korea	Ukraine

### MLS

Atlanta United FC	LA Galaxy	NYC FC	Seattle Sounders FC
Chicago Fire	Portland Timbers	San Jose Earthquakes	Sporting Kansas City
Columbus Crew SC	San Antonio Spurs	Philadelphia Union	Toronto FC
D.C. United	New England Revolution	Portland Timbers	Vancouver Whitecaps FC
	New York Red Bulls	San Jose Earthquakes	

### International Clubs

AC Milan	Bayern Munich	Inter Milan	
Arsenal	Chelsea	Manchester United	Real Madrid
AS Roma	Liverpool	Manchester City	Paris Saint-Germain
Borussia Dortmund	Manchester United	Newcastle United	Valencia CF

### Top Players

Christiano Ronaldo	Landon Donovan	Paul Feggo	Roberto Martinez
Diego Costa	Paul Pogba	Steven Gerrard	Wendie Renard

**REDACTED—FOR PUBLIC INSPECTION**

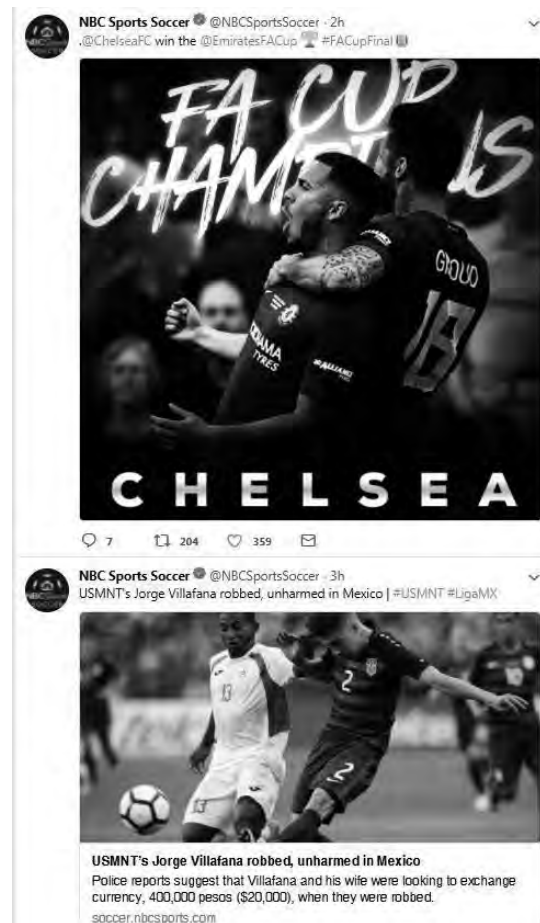
Screenshots from <https://twitter.com/nbcsportssoccer?lang=en> (last visited May 17, 2018)





## REDACTED—FOR PUBLIC INSPECTION

Screenshots from <https://twitter.com/nbcsportssoccer?lang=en> (last visited May 17, 2018)



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# **EXHIBIT 6**

**CONFIDENTIAL DOCUMENT  
WITHHELD IN ITS ENTIRETY**

**REDACTED—FOR PUBLIC INSPECTION**

# **EXHIBIT 7**

**CONFIDENTIAL DOCUMENT  
WITHHELD IN ITS ENTIRETY**

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# **EXHIBIT 8**

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# OUR PROGRAMMING STRATEGY IS DRIVING GROWTH



NBCUniversal  
HISPANIC



## HIGH PRODUCTION

el SEÑOR  
de los CIELOS



MasterChef  
LATINO

la REINA

SEÑORA  
ACERO

SERIES  
PREMIUM

TELEMUNDO  
SUPER  
SERIES

## MUSIC & LIVE EVENTS

LATIN  
AMERICAN  
MUSIC  
AWARDS

PREMIOS  
tu MUNDO

PREMIOS  
billboard  
DE LA MÚSICA LATINA

N EL  
GANADOR

LA  
Voz

MUSIC  
BIO  
SERIES

## DIGITAL/ SOCIAL/ MOBILE



Fluency<sup>+</sup>

LOVE CLICKS

MID SECRET  
SALSA

Quince  
anera

#elPulso  
via Mashable

AWESOMENESS TV

hulu

UNEQUALED NBCUniversal

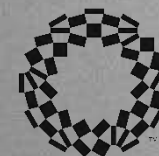
## SPORTS



CADENAS OFICIALES



WOMEN'S WORLD CUP  
FRANCE 2019



TOKYO 2020



Premier  
League

TYM

BOXEO



HISPANIC





TELEMUNDO  
*Deportes*

BEYOND GOALS.  
DOMINANCE.

Telemundo Deportes offers fanáticos across the U.S. prime coverage of the biggest best global sporting events and franchises in their preferred language.

HISPANIC



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YOUNGER

40 YEARS

UNDUPLICATED

VS. NFL, MLB, NCAA FOOTBALL & NBA

BILINGUAL

78% A18-49

NO.1

SPANISH-LANGUAGE SPORTS  
& ENTERTAINMENT SHOW

TITULARES Y MÁS

BOXEO TELEMUNDO FORD



Source: Nielsen, Live+SD data stream. 2017 Sports Events on TEL, UNVSO duplication with NCAA Football on FOX, ABC, CBS, ESPN, ESPN2, FS1; MLB Regular Season on FOX, ESPN, ESPN2, FS1, TBS; NBA Regular Season on ABC, TNT, ESPN; 2017 NFL Regular Season on CBS, FOX, ESPN. All duplication based on 2017 calendar year. Reach based on 6-min qualifier and 75% unification.

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# 2018 FIFA WORLD CUP RUSSIA™

Telemundo Deportes is the HOME of FIFA through 2026!

Be a part of the most powerful global sporting event for Hispanic consumers next summer as 32 countries compete across 64 games to crown 1 world champion.

In 2018, Telemundo is going to deliver the most interactive, powerful World Cup ever with enhanced livestream, digital content and the power of NBCUniversal.

## PRODUCTION DETAILS

- Airs: June 14, 2018 – July 15, 2018
- Length: 64 games, each game  
90 minutes



CADENAS OFICIALES





FIFA WORLD CUP  
RUSSIA 2018

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+ TWITTER CONTENT POOL

---

WORLD CUP,  
SOCIAL ENGAGEMENT  
AMPLIFIED



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# THE WORLD CUP IS PROVEN TO DRIVE SOCIAL CONVERSATION

672M

TWEETS  
WERE SENT  
DURING  
2014  
WORLD CUP

5.6M

TWEETS  
GENERATED  
DURING  
2014  
BRAZIL V.  
GERMANY

55M

TWEETS  
GENERATED  
DURING THE  
2014  
WORLD CUP  
BRAZIL

#1

IN TWITTER  
UNIQUES  
AND TWEETS  
FOR 21/25  
OF THE 2014  
WORLD CUP  
MATCHES

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# HOW TWITTER CONTENT POOL WORKS FOR YOU

## ORGANIC CONTENT

@TelemundoDeportes  
tweets Video Clip



## CONTENT POOL

As an Amplify advertiser, **Mazda** will have access to promote video clips from the 2018 FIFA World Cup Russia™ tournament posted by the @TelemundoDeportes handle

## :06 PRE-ROLL

Tweet is promoted to **Mazda's Hispanic** target audience with :06 pre roll before video clip plays



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# PREMIUM CONTENT YOU CAN AMPLIFY

THE WORLD CUP TWITTER CONTENT POOL WILL INCLUDE



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# YOUTUBE-PREMIUM WORLD CUP FIFA VIDEO



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# WORLD CUP 2018 & TELEMUNDO DEPORTES: YOUTUBE-EXCLUSIVE FIFA VIDEO

Telemundo's content has a long-standing history of performing well on YouTube. For the **2018 FIFA WORLD CUP**, Telemundo Deportes has partnered with YouTube to create an exclusive video offering that your brand can sponsor.

This partnership with YouTube as a video extension offers brands some of the **MOST DESIRABLE VIDEOS OF THE TOURNAMENT**. Posted via a native video platform, exclusive videos offer your brand unique content and added reach.



# TELEMUNDO DEPORTES' REDACTED FOR PUBLIC INSPECTION YOUTUBE-EXCLUSIVE FIFA VIDEO



## CONDENSED GAMES

---

The best of every game, taking 90 minute matches and condensing them into 5-7 minute recaps.

Videos will deliver the best of the games to a millennial audience for quick consumption.

**Total of 64 clips: 1x per World Cup match; 5-7min long**



## PLAYER HIGHLIGHTS

---

The FIFA World Cup is a can't miss sporting event filled with unbelievable OMG moments. From plays, to goals, to stand out players, these are the moments that will be trending – and exclusive videos on YouTube will give fans a unique Player Camera POV.

**Total of 128 clips: 2x clips per game; ~90 sec long each**



# SOME OF THE MOST EXCITING MOMENTS FROM 2014



Marquez' "foul" on Robben - #NoEraPenal



Uruguay's Luis Suarez and his "bite" incident



Neymar's injury going into Semi-Finals



Penalty save by Netherland's Tim Krul



David Villa's back kick goal against Australia



Brazil's meltdown (vs. GER) in Semi-Final

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# PREMIER LEAGUE

Telemundo Deportes is THE exclusive Spanish-language home of the Premier League with multi-platform weekly match coverage on Telemundo, Universo, and streaming live on the En Vivo app. Broadcasts feature pre-game, halftime and post-game expert analysis, player profilers, player interviews, and highlights, as well as, sponsorship opportunities via segments and in-game features that bring brands close to the game action.

Hosted by our acclaimed sports team of Andres Cantor, Sammy Sadovnik and Copan Alvarez, and featuring Mexican National team legends: Carlos Hermosillo and Manuel Sol, Premier League is the soccer fans best way to kick off the weekend.

## PRODUCTION DETAILS

- **Airs:** Season runs August – May (17/18 and 18/19)
- **Length:** Pre-game: 30 minutes; Halftime: 15 minutes; Game: 90 minutes
- **Number of matches:** ~40 on Telemundo, ~100 on Universo, ~100 livestreaming
- **Distribution:** Telemundo, Universo, TelemundoDeportes.com, En Vivo App

## CLUBS

Arsenal / AFC Bournemouth / Brighton and Hove Albion / Burnley / Chelsea / Crystal Palace / Everton / Huddersfield Town / Leicester City / Liverpool / Manchester City / Manchester United / Newcastle United / Southampton / Stoke City / Swansea City / Tottenham Hotspur / Watford / West Bromwich Albion / West Ham United



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# FIFA CLUB WORLD CUP™ UAE 2018

The best clubs in the world compete for global supremacy (and bragging rights!). Six continental champions + 1 host club will battle it out in the 2018 FIFA Club World Cup UAE™ this December. Join Telemundo on all platforms to see who will be the club to win it all.

## PRODUCTION DETAILS

- Airs: Telemundo & Universo – December 2018 (TBC)
- Location: United Arab Emirates – 2 venues
- Distribution: Telemundo, Universo, TelemundoDeportes.com, En Vivo Extra App



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# HIGH QUALITY CONTENT



## ▶ SUPER SERIES SIZZLE

## ▶ SERIES PREMIUM SIZZLE



**LA REINA DEL SUR**  
Q2'19



**EL SEÑOR DE LOS CIELOS**  
Q2'19



**EL RECLUSO**  
Q1'19



**NICKY JAM:  
EL GANADOR** Q4'18



**EL BARÓN ROJO**  
1Q'19



**SEÑORA ACERO**  
Q3'18



**FALCO**  
Q3'18



**EL SECRETO DE  
SELENA** Q2'19





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# HIGH QUALITY CONTENT



## Drama Series

**PRISIONERO**  
NUMERO

**PRISIONERO NUMERO**  
**UNO Q1'19**



**FALSA**  
**IDENTIDAD**

**FALSA IDENTIDAD**  
**Q3'18**

## Morning Shows & News

  
**UN NUEVO DÍA**

**UN NUEVO DÍA**



**NOTICIAS TELEMUNDO**

## Entertainment & Reality

**EXATLÓN**  
ESTADOS UNIDOS

**EXATLON**  
**Q3'18**



**BETTY IN NY**  
**Q1'19**



**LA VOZ**  
**Q1'19**



**MASTERCHEF LATINO**  
**Q2'19**



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# EL SEÑOR DE LOS CIELOS

S 7

Telemundo's award-winning Super Series™ has made Spanish-Language TV history. In the return of this powerhouse franchise, the tables have turned on Aurelio who, after exerting his power as a hunter, has now become the hunted.

## PRODUCTION DETAILS

- Production: March-August 2018
- S7 Premiere: Q2'19
- S7 Finale: Q3'19
- Airs: Monday – Friday ET, 10PM
- Distribution: Telemundo, Telemundo.com (mobile/desktop), NOW App, VOD and YouTube Prime+
- Length: 89x one-hour episodes

## CAST

Rafael Amaya, Robinson Díaz, Carmen Aub, Maria Conchita Alonso, Ivan Arana, Juana Arias and Alejandro Lopez



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# EXATLÓN

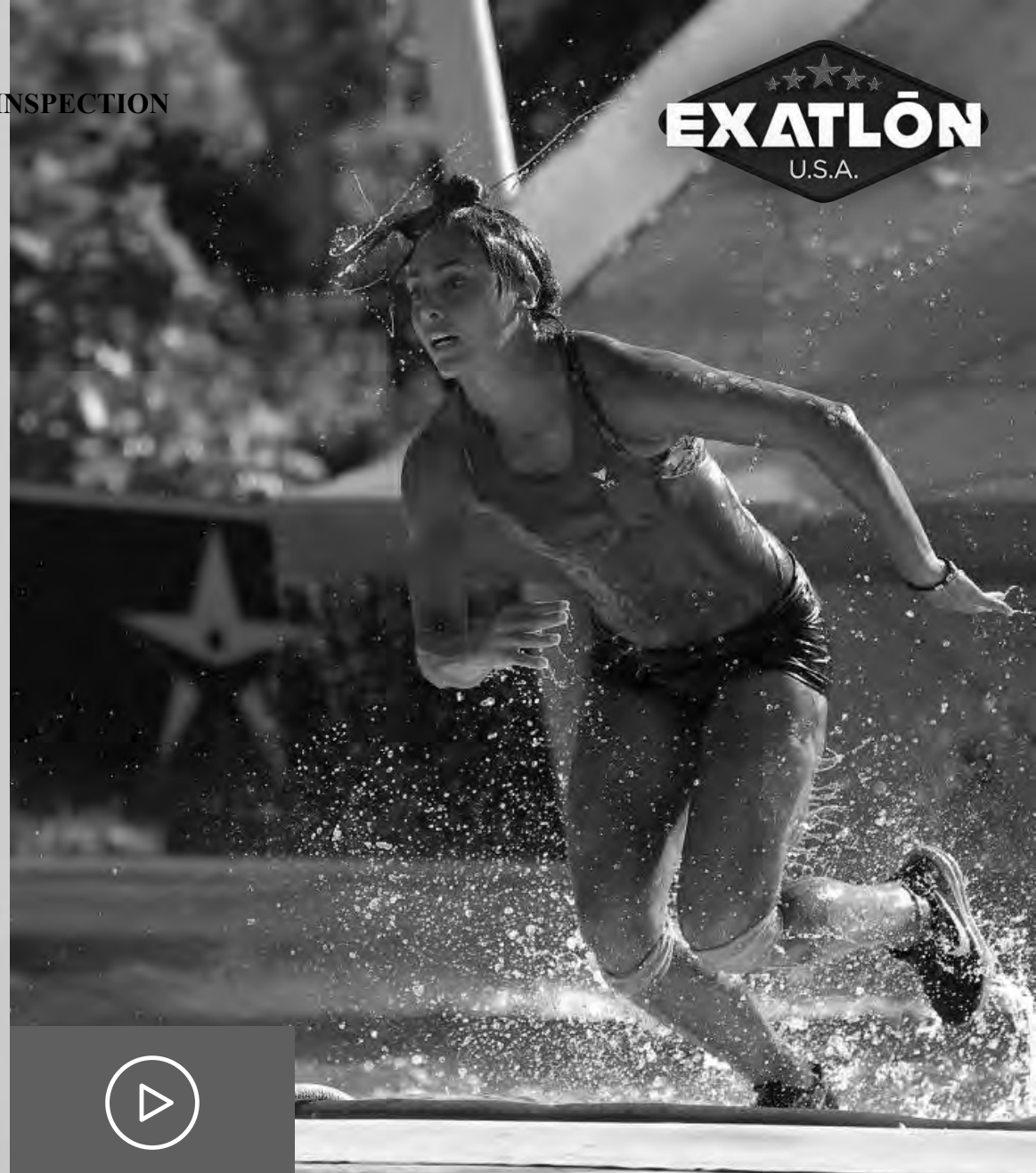
*Exatlón* is a sports and reality survival competition show where two teams compete in different challenges that will test their physical, mental and competitive skills. “Exatlón” will get the best out of all competitors through a combination of extreme circuits (EX) and 10 different sports (DECATHLON). Rival teams, made up of five men and five women each, including some celebrities and sports athletes, will face challenging obstacles that will test their strength, speed, endurance and motor skills. The teams not only compete amongst each other but within the teams, they also have to live together and the living conditions are part of the competition. At the end of the intense and exhaustive battle, the winner will be named the champion of “Exatlón.”

## PRODUCTION DETAILS

- Episodes: 53x two –hour episodes
  - 44x episodes (Monday – Friday)
  - 9x episodes (Sundays)
- Produced by Acunmedya
- Distributed by TV Azteca exclusively for Telemundo
- Airs: Q3’18 (July – September)
  - Monday – Friday (7-9PM)
  - Sunday: Elimination (7-9PM)

## CAST

- A total of 20 U.S. based participants
- Host: Erasmo Provenza (Telemundo Deportes anchor)





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# FALCO

A police series about a young homicide detective who wakes up 23 years later after being shot and left in a coma. The world around him has changed; he missed his daughter's childhood, his wife remarried, and he has to learn to work with his new partner. But Falco has not lost his detective skills, and he and his team will struggle to adjust to each other as he tries to perform his job while trying to figure out what happened 20 years ago.

## PRODUCTION DETAILS

- Premiere: Q3'18
- Finale: Q4'18
- Airs: 9-10PM ET Sunday
- Length: 14x one-hour episodes

## CAST

- TBD







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# FALSA IDENTIDAD

*Falsa Identidad* is the story of Isabel and Diego, two strangers who must flee their past in order to escape from their enemies. Diego left his family after his father died and his mother remarried. In an act of rebellion, Diego became involved in a criminal world, selling fuel to the town's most powerful drug dealer, Gavino Gaona. Isabel married Porfirio "El Corona," a member of a nortaña band, when she was 15 years old and lives a life of domestic abuse. This new series will tell the story of two strangers fleeing their past who must assume new identities and pass themselves off as a happily married couple to escape their enemies and survive.

## PRODUCTION DETAILS

- Premiere: Q3'18
- Finale: Q1'19
- Airs: 9-10PM ET, Mon - Fri
- Length: 86x one-hour episodes

## CAST

- TBD



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# SEÑORA ACERO

S 5

Telemundo's Super Series™ ratings leader returns where Vicenta Acero – La Coyote – must face all sorts of dangers, including an enemy from the past who comes to settle an old debt and takes revenge on her most sacred treasure, her son. This marks the beginning of a relentless persecution and Vicenta will be forced to flee with her son to protect him from the infinite evil of this monster.

## PRODUCTION DETAILS

- Production: May-October 2018 (Mexico)
- Premiere: Q3'18
- Finale: Q1'19
- Airs: Monday-Friday ET, 10PM
- Distribution: Telemundo, Telemundo.com (mobile/desktop), NOW App, VOD and YouTube Prime+
- Length: 60x one-hour episodes

## CAST

Carolina Miranda, Luis Ernesto Franco, Ana Lucía Domínguez, Diego Cadavid, Jorge Zárate, Gaby Espino





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# NICKY JAM, EL GANADOR

Directed by award-winning director, Jessy Terrero, *Nicky Jam: El Ganador (The Winner)* is an authorized bio-series based on the life and career of the Latin music superstar and double platinum artist, Nicky Jam.

Starring the reggaeton superstar himself, the scripted drama series will tell the life story of award-winning Nicky Jam, a singer-songwriter, who has become a worldwide music phenomenon.

From his humble beginnings and mid-life predicaments, to his rise to the top of the Reggaeton movement *Nicky Jam, El Ganador* will follow the highs and lows experienced by one of the most prolific artists in the genre. The reborn star has received some of the most prestigious awards in the industry, sold out stadiums, earned the admiration of his colleagues and emerged as a leading exponent of urban music.

## PRODUCTION DETAILS

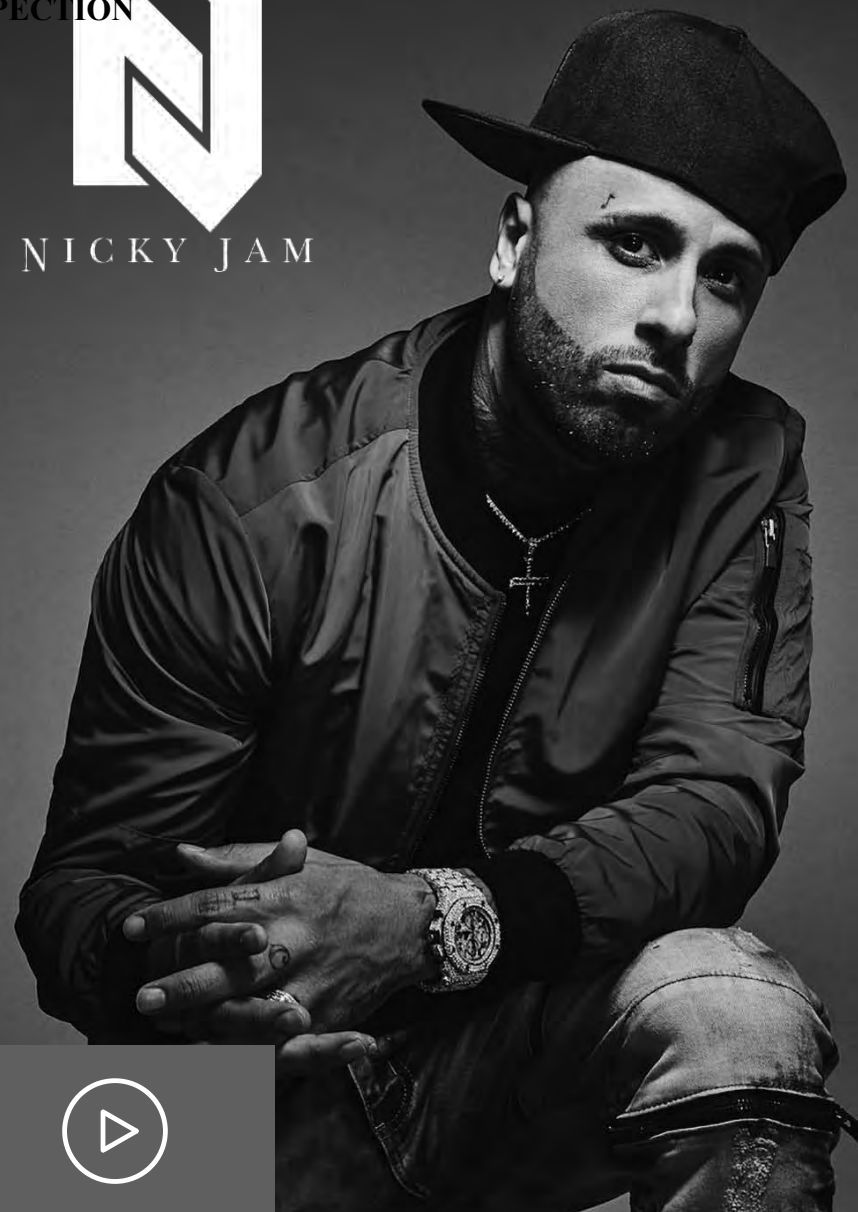
- Premiere: Q4'18
- Finale: Q1'19
- Airs: Sunday 9-10PM ET
- Length: 13x one-hour episodes
- Production Schedule: Starts January 15th
- Production: Endemol Shine Boomdog
- Produced by: Jessy Terrero
- Distribution: Telemundo, Telemundo.com, Telemundo NOW App, YouTube, VOD, Netflix (USH and non USH)

## CAST

- Nick Rivera Caminero



NICKY JAM



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# LA VOZ

*La Voz*, the Spanish-language version of NBC's Emmy-winning reality competition "The Voice," comes to Telemundo in search of the nation's most promising unknown Hispanic vocalists. Co-produced by Telemundo and Talpa and produced at the state-of-the-art Telemundo Center, *La Voz* will go in search of the nation's most promising unknown Hispanic vocalists.

Global Latin pop singer Luis Fonsi, the first coach to be announced, will join the other three coaches to find the nation's next best Hispanic vocal talent. But the selection process won't be easy because the coaches must make their decisions based on one and only one factor, *La Voz* (*The Voice*).

## PRODUCTION DETAILS

- Premiere: Q1'19
- Finale: Q2'19
- Airs: 8-10PM ET Sundays
- Length: 13x one-hour episodes
- Production: Telemundo & Talpa Media
- Distribution: Telemundo, Telemundo.com, Telemundo NOW, Telemundo App

## HOST/JUDGES

- Luis Fonsi (first judge announced)



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# BETTY IN NEW YORK

*Betty in New York* is the modern retelling of the ground-breaking story, “Yo soy Betty, la fea.” This new adaption by the internationally-acclaimed writer Fernando Gaitan, tells the story of Beatriz Aurora Rincon Lozano, an intelligent and skilled Latina in New York, who after six months of being rejected in multiple job interviews due to her lack of attractiveness, decides to accept a position below her qualifications at a NYC fashion company. Betty will grow as a woman, but she will also face the biggest challenge of her life, one that even all her degrees and specializations will not help her solve: love.

## PRODUCTION DETAILS

- Premiere: 1Q’19
- Finale: 3Q’19
- Airs: Monday – Friday; 8p – 9p ET
- Episodes: 113x one-hour episodes
- Production Window: July 2018 – December 2018

## CAST

- TBD





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# EL RECLUSO

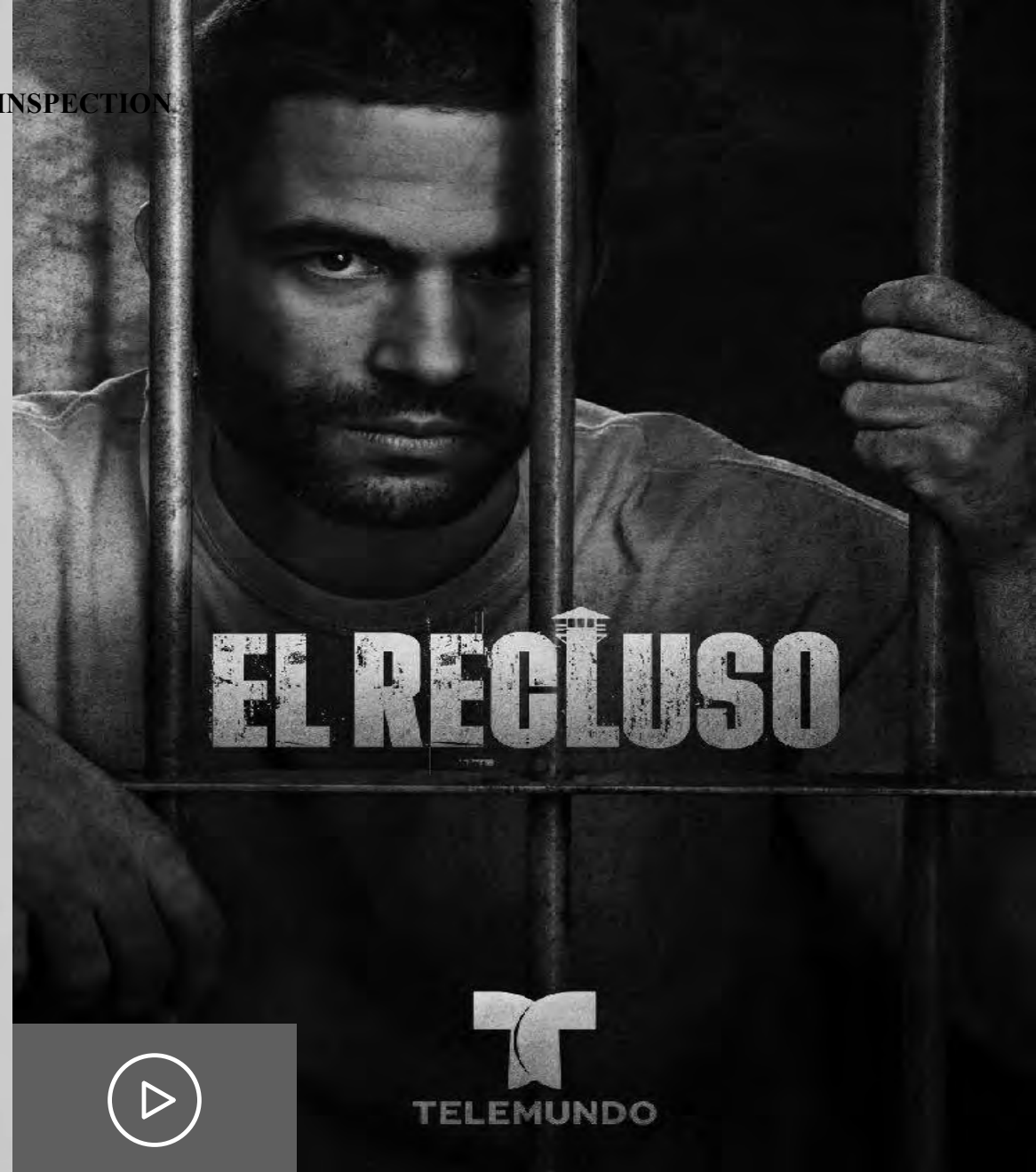
*El Recluso* (The Inmate) is a groundbreaking new premium series that tells the story of a man on a secret mission in a maximum security prison to rescue the daughter of a prominent US judge. The lead role is played by crossover actor Ignacio Serricchio (Lost in Space, Bones, The Wedding Ringer).

## PRODUCTION DETAILS

- Premiere: Q1'19
- Finale: Q2'19
- Airs: 10-11PM ET, Sundays
- Length: 13x on-hour episodes

## CAST

Starring Argentine actor Ignacio Serricchio (Lazaro Mendoza) and Mexican actress Ana Claudia Talancón (Frida).





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# EL BARÓN ROJO

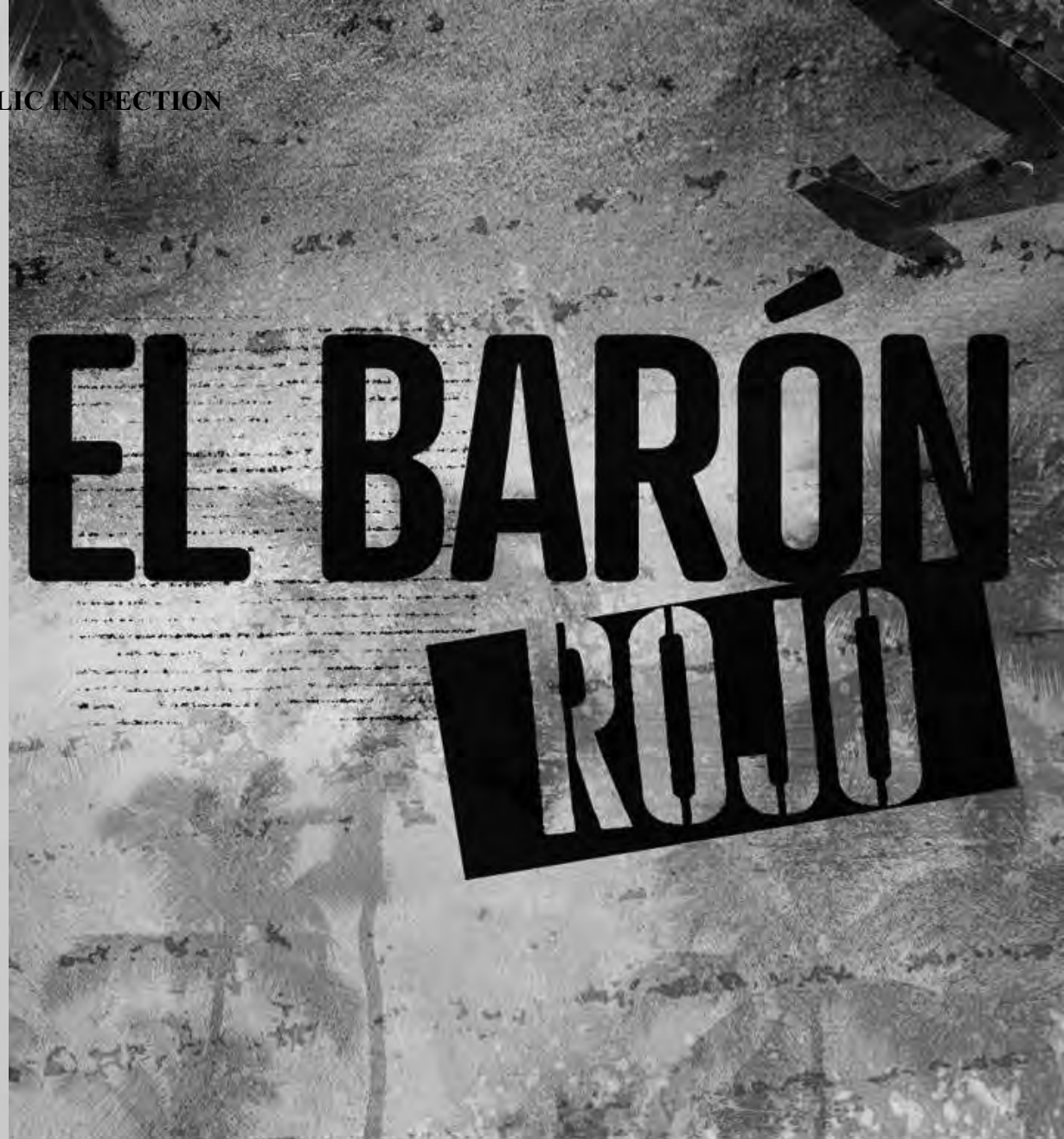
*El Barón Rojo* is the story of Nacho Montero, a cultured, well-educated bon vivant with a penchant for adventure who embarks on a quest to become one of the pioneers of drug trafficking in the eighties. In an act of rebellion against his parents, he joins the most powerful cartel bosses of the time and floods the United States with cocaine. Everything seems to be poised for Baron to conquer the world, but the excesses, violence and illegality of Nacho's life make him finally lose everything he fought for.

## PRODUCTION DETAILS

- Premiere: Q1'19
- Finale: Q2'19
- Airs: 10-11PM ET, Mon - Fri
- Length: 60x one-hour episodes

## CAST

- TBD





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# PRISIONERO NÚMERO UNO

*Prisionero Número Uno* tells the story of Carmelo Alvarado, a hardworking immigrant who migrates to the United States to escape poverty and, after finding moderate success, is deported to Mexico. Back home, Carmelo's charisma and good looks eventually land him a television show, where the host's hard-hitting political commentary about the new U.S. president bring him massive popularity – and an audience to match.

This unexpected success catapults Carmelo into political life and, ultimately, all the way to the presidency of Mexico. Here, however, trouble awaits. The former TV star-turned-President's closest collaborators betray his trust and have him imprisoned, gaining him the new title of Prisionero Número Uno (Prisoner #1).

## PRODUCTION DETAILS

- Premiere: Q1'19
- Finale: Q2'19
- Airs: 9-10PM ET, Mon - Fri
- Length: 60x one-hour episodes

## CAST

- TBD



PRISIONERO  
NÚMERO







# NBCUniversal

## HISPANIC

## DIGITAL

BEYOND LEGACY.  
TRAILBLAZING.

Building U.S. Hispanic FANS  
on every screen and in every  
room of their homes.

---

## SCALE

#1 ORIGINAL PRODUCER OF CONTENT REACHING THE  
MOST U.S. HISPANICS

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## INNOVATION

NEW AND DIFFERENT FORMATS BROUGHT TO FANS ON  
THE PLATFORMS THEY LOVE

---

## SOCIAL ENGAGEMENT

NO. 1 SPANISH LANGUAGE NETWORK IN SOCIAL ENGAGEMENT

HISPANIC



Source: Shareablee, Full Year 2017, based on social actions, Global Audience

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# LOVE CLICKS: 24/7

**The ultimate 24/7 digi-social reality show for the always-connected generation M**

No one said finding love was easy, but Telemundo will sure make it fun to watch with this digital/social-first reality competition series. In this 24/7 bilingual show, fans get to watch as contestants compete in their search for true love – across every screen.

Over 7 weeks, contestants will live in a luxurious mansion and seek out their true love through a series of speed dates, challenges, romantic outings, and matches made by the audience. In the end, the fan is in control – deciding camera positions, awarding contestants with special activities, and voting on their favorite couple.



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# MVTO ENTERTAINMENT

**Delivers social-first culturally relevant entertainment to millennials and genz audience.**

MVTO is our social first approach for creating content that embodies the American-Latino experience; being bilingual, multicultural and proud of our culture and passion.

Bringing the best in entertainment, MVTO artistically curates pop-culture delivering socially viral videos, trending topics and breaking entertainment news to our audience socially in both English and Spanish.

Articles and video franchises are informed from our audience passion points that include music, movies, tech, food, celeb news and entertainment lifestyle trends.



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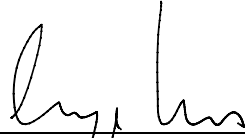
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**CERTIFICATE OF SERVICE**

I, Georgios Leris, hereby certify that on June 4, 2018, I caused a copy of the foregoing Highly Confidential Reply, the Confidential Reply, as well as a copy of the redacted version thereof electronically filed with the Federal Communications Commission on this day, to be served upon the parties listed below by overnight delivery.

Michael D. Hurwitz  
Willkie Farr & Gallagher LLP  
1875 K Street, NW  
Washington, DC 20006-1238  
*Counsel to Comcast Corp.*

  
\_\_\_\_\_  
Georgios Leris